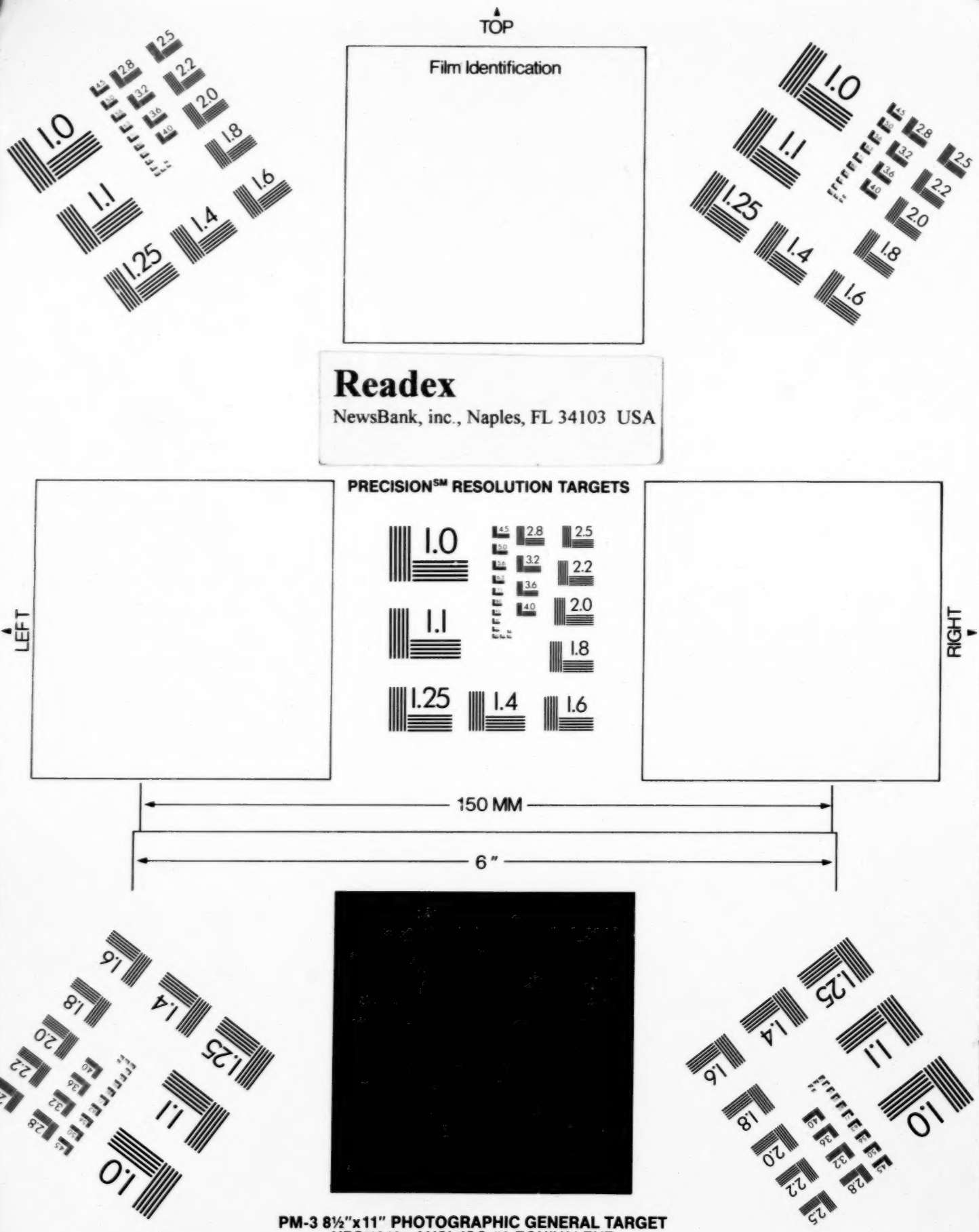
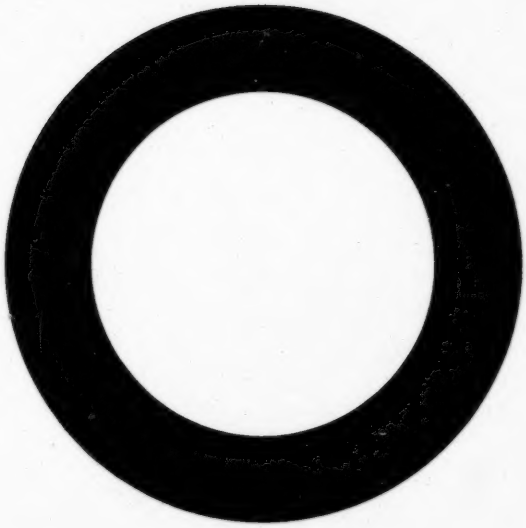


PM-3 8½″x11″ PHOTOGRAPHIC GENERAL TARGET
NBS 1010a ANSI/ISO #2 EQUIVALENT



A/67/4

United Nations

Report of the International Court of Justice

1 August 2011-31 July 2012

General Assembly

Official Records
Sixty-seventh Session
Supplement No. 4

Please recycle

General Assembly
Official Records
Sixty-seventh Session
Supplement No. 4

Report of the International Court of Justice

1 August 2011-31 July 2012

United Nations • New York, 2012

Note

Symbols of United Nations documents are composed of letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0251-8473

[1 August 2012]

Contents

Chapter		Page
I.	Summary	1
II.	Organization of the Court	9
	A. Composition	9
	B. Privileges and immunities	10
III.	Jurisdiction of the Court	12
	A. Jurisdiction of the Court in contentious cases	12
	B. Jurisdiction of the Court in advisory proceedings	12
IV.	Functioning of the Court	14
	A. Committees constituted by the Court	14
	B. Registry	14
	C. Seat	21
	D. Peace Palace Museum	22
V.	Judicial work of the Court	23
	A. General overview	23
	B. Pending contentious proceedings during the period under review	24
	1. *Gabčikovo Nagymaros Project (Hungary/Slovakia)*	24
	2. *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*	24
	3. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*	28
	4. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)*	29
	5. *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*	30
	6. *Maritime Dispute (Peru* v. *Chile)*	33
	7. *Aerial Herbicide Spraying (Ecuador* v. *Colombia)*	34
	8. *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*	35
	9. *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*	37
	10. *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*	41

11. *Whaling in the Antarctic (Australia* v. *Japan)* 45

12. *Frontier Dispute (Burkina Faso/Niger)* 45

13. *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* 47

14. *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand) (Cambodia* v. *Thailand)* 49

15. *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica)* 52

C. Pending advisory proceedings during the period under review 54

Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development (request for advisory opinion) 54

VI. Visits to the Court and other activities 58

VII. Publications, documents and website of the Court 60

VIII. Finances of the Court 63

A. Method of covering expenditure 63

B. Drafting of the budget 63

C. Budget implementation 63

D. Budget of the Court for the biennium 2012-2013 63

Annex

International Court of Justice: organizational structure and post distribution as at 31 July 2012 66

Chapter I

Summary

Composition of the Court

1. The International Court of Justice, the principal judicial organ of the United Nations, consists of 15 judges elected for a term of nine years by the General Assembly and the Security Council. Every three years one third of the Court's seats falls vacant. On 10 November 2011, three members of the Court — Judges Hisashi Owada (Japan), Peter Tomka (Slovakia) and Xue Hanqin (China) — were re-elected, and Giorgio Gaja (Italy) was elected a new member of the Court, with effect from 6 February 2012. The election of a fifth judge could not be concluded on 10 November, since no candidate obtained an absolute majority either in the General Assembly or in the Security Council; the election was therefore postponed. On 13 December 2011, Julia Sebutinde (Uganda) was elected a member of the Court by the General Assembly and the Security Council, with effect from 6 February 2012. On that date, the Court, as newly composed, elected Peter Tomka its President and Bernardo Sepúlveda-Amor (Mexico) its Vice-President, each for a term of three years.

2. During the period under review, Awn Shawkat Al-Khasawneh (Jordan resigned as member of the Court, following his appointment in 2011 as Prime Minister of Jordan. On 27 April 2012, the General Assembly and the Security Council elected Dalveer Bhandari (India) to succeed Judge Al-Khasawneh as a member of the Court, with immediate effect. Judge Bhandari will hold office for the remainder of Judge Al-Khasawneh's term, which will expire on 5 February 2018.

3. At 31 July 2012, the composition of the Court was therefore as follows: President: Peter Tomka (Slovakia); Vice-President: Bernardo Sepúlveda-Amor (Mexico); Judges: Hisashi Owada (Japan), Ronny Abraham (France), Kenneth Keith (New Zealand), Mohamed Bennouna (Morocco), Leonid Skotnikov (Russian Federation), Antônio Augusto Cançado Trindade (Brazil), Abdulqawi Ahmed Yusuf (Somalia), Christopher Greenwood (United Kingdom of Great Britain and Northern Ireland), Xue Hanqin (China), Joan E. Donoghue (United States of America), Giorgio Gaja (Italy), Julia Sebutinde (Uganda) and Dalveer Bhandari (India).

4. The Registrar of the Court is Philippe Couvreur, of Belgian nationality. The Deputy-Registrar of the Court is Thérèse de Saint Phalle, a national of the United States of America and France.

5. The number of judges ad hoc chosen by States parties in cases during the period under review was 26, the associated duties being carried out by 19 individuals (the same person is on occasion appointed to sit as judge ad hoc in more than one case).

Role of the Court

6. The International Court of Justice is the only international court of a universal character with general jurisdiction. That jurisdiction is twofold.

7. In the first place, the Court has to decide upon disputes freely submitted to it by States in the exercise of their sovereignty. In this respect, it should be noted that, as at 31 July 2012, 193 States were parties to the Statute of the Court and that 67 of them had deposited with the Secretary-General a declaration of acceptance of the Court's compulsory jurisdiction in accordance with Article 36, paragraph 2, of the

Statute. Furthermore, some 300 bilateral or multilateral treaties provide for the Court to have jurisdiction in the resolution of disputes concerning their application or interpretation. The Court's jurisdiction can also be founded, in the case of a specific dispute, on a special agreement concluded between the States concerned. Finally, when submitting a dispute to the Court, a State may propose to found the Court's jurisdiction upon consent yet to be given or manifested by the State against which the application is made, in reliance on article 38, paragraph 5, of the Rules of Court. If the latter State gives its consent, the Court's jurisdiction is established on the date that this consent is given (this situation is known as *forum prorogatum*).

8. Secondly, the Court may also be consulted on any legal question by the General Assembly or the Security Council and, on legal questions arising within the scope of their activities, by all other organs of the United Nations and agencies so authorized by the General Assembly.

Cases referred to the Court

9. At 31 July 2012, the number of contentious cases on the Court's List stood at 11.[1] The aforementioned contentious cases came from all over the world: five were between Latin American States, two between European States, two between African States and one between Asian States, while one was intercontinental in character.

10. The subject matter in those cases varied widely, including territorial and maritime disputes, environmental damage, violation of territorial integrity, violation of international humanitarian law and human rights, genocide, interpretation and application of international conventions and treaties and interpretation of the Court's judgments.

11. Cases referred to the Court are growing in factual and legal complexity. In addition, they frequently involve a number of phases, as a result of, for example: the filing of preliminary objections by respondents to jurisdiction or admissibility; the submission of requests for the indication of provisional measures, which have to be dealt with as a matter of urgency; and applications for permission to intervene by third States.

Main judicial events (in chronological order)

12. During the reporting period, the Court held public hearings in three contentious cases. It handed down four judgments, one advisory opinion and three orders, while the President of the Court made one order (see paras. 112 to 116 below). One new case was also initiated before the Court.

---

[1] The Court delivered its judgment in the case concerning the *Gabčikovo Nagymaros Project (Hungary/Slovakia)* on 25 September 1997. The case nevertheless technically remains pending, given the fact that, in September 1998, Slovakia filed a request for an additional judgment. Hungary filed a written statement of its position on the request made by Slovakia within the time limit of 7 December 1998 fixed by the President of the Court. The parties have subsequently resumed negotiations over the implementation of the 1997 judgment and have informed the Court on a regular basis of the progress made.
The Court delivered its judgment in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* in December 2005. This case also technically remains pending, in the sense that the parties could again turn to the Court, as they are entitled to do under the judgment, to decide the question of reparation if they are unable to agree on this point.

13. On 5 December 2011, the Court delivered its judgment in the case concerning the *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*, in which it found that it had jurisdiction to entertain the application filed by the former Yugoslav Republic of Macedonia on 17 November 2008 and that this application was admissible. It also found that Greece, by objecting to the admission of the former Yugoslav Republic of Macedonia to the North Atlantic Treaty Organization (NATO), had breached its obligation under article 11, paragraph 1, of the Interim Accord of 13 September 1995; and it rejected all other submissions made by the former Yugoslav Republic of Macedonia (see paras. 178 to 187 below).

14. On 22 December 2011, Nicaragua instituted proceedings against Costa Rica with regard to "violations of Nicaraguan sovereignty and major environmental damages to its territory". Nicaragua contends that Costa Rica is carrying out major construction work along most of the border area between the two countries, with grave environmental consequences. It asserts that Costa Rica has repeatedly refused to give Nicaragua appropriate information on the construction works it is undertaking and has denied that it has any obligation to prepare and provide to Nicaragua an Environmental Impact Assessment, which would allow for an evaluation of the works. The Applicant therefore requests the Court to order Costa Rica to produce such a document and to communicate it to Nicaragua. It adds that "in all circumstances and particularly if this request does not produce results, [it] reserves its right to formally request provisional measures". Nicaragua also states that as "the legal and factual grounds of [its Application] are connected to the ongoing case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*", it "reserves its rights to consider in a subsequent phase of the present proceedings ... whether to request that the proceedings in both cases should be joined" (see paras. 243 to 251 below).

15. On 1 February 2012, the Court delivered its advisory opinion concerning *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development*, in which it found that it had jurisdiction to give the advisory opinion requested and decided to comply with the request for an advisory opinion. With regard to the questions put for an advisory opinion by the Executive Board of the International Fund for Agricultural Development (IFAD), it was of the opinion: (a) with regard to question I, that the Administrative Tribunal of the International Labour Organization (ILO) was competent, under article II of its Statute, to hear the complaint introduced against IFAD on 8 July 2008 by Ana Teresa Saez García; (b) with regard to questions II to VIII, that these questions did not require further answers from the Court; (c) with regard to question IX, that the decision given by the Administrative Tribunal of ILO in its judgement No. 2867 was valid (see paras. 252 to 262 below).

16. On 3 February 2012, the Court rendered its judgment in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*, in which it: (a) found that Italy had violated its obligation to respect the immunity which the Germany enjoys under international law by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the German Reich between 1943 and 1945; (b) found that Italy had violated its obligation to respect the immunity which Germany enjoys under international law by taking measures of constraint against Villa Vigoni; (c) found that Italy had

violated its obligation to respect the immunity which Germany enjoys under international law by declaring enforceable in Italy decisions of Greek courts based on violations of international humanitarian law committed in Greece by the German Reich; (d) found that Italy must, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions of its courts and those of other judicial authorities infringing the immunity which Germany enjoys under international law cease to have effect; and (e) rejected all other submissions made by Germany (see paras. 188 to 199 below).

17. On 19 June 2012, the Court delivered its judgment on the question of compensation in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, in which it: (a) fixed the amount of compensation due from the Democratic Republic of the Congo to the Guinea for the non-material injury suffered by Mr. Diallo at US$ 85,000; (b) fixed the amount of compensation due from the Democratic Republic of the Congo to the Guinea for the material injury suffered by Mr. Diallo in relation to his personal property at US$ 10,000; (c) found that no compensation was due from the Democratic Republic of the Congo to Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a loss of professional remuneration during his unlawful detentions and following his unlawful expulsion; (d) found that no compensation was due from the Democratic Republic of the Congo to Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a deprivation of potential earnings; (e) decided that the total amount of compensation due under points 1 and 2 above should be paid by 31 August 2012 and that, in case it had not been paid by this date, interest on the principal sum due from the Democratic Republic of the Congo to Guinea would accrue as from 1 September 2012 at an annual rate of 6 per cent; and (f) rejected the claim of Guinea concerning the costs incurred in the proceedings (see paras. 118 to 125 below).

18. On 20 July 2012, the Court delivered its judgment in the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*, in which it: (a) found that it had jurisdiction to entertain the dispute between the parties concerning the interpretation and application of article 6, paragraph 2, and article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, which Belgium submitted to the Court in its application filed in the Registry on 19 February 2009; (b) found that it had no jurisdiction to entertain the claims of Belgium relating to alleged breaches, by Senegal, of obligations under customary international law; (c) found that the claims of Belgium based on article 6, paragraph 2, and article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 were admissible; (d) found that Senegal, by failing to make immediately a preliminary inquiry into the facts relating to the crimes allegedly committed by Hissène Habré, had breached its obligation under article 6, paragraph 2, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984; (e) found that Senegal, by failing to submit the case of Hissène Habré to its competent authorities for the purpose of prosecution, had breached its obligation under article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984; and (f) found that Senegal must, without further

delay, submit the case of Hissène Habré to its competent authorities for the purpose of prosecution, if it did not extradite him (see paras. 200 to 212).

Continuation of the sustained level of activity of the Court

19. The sustained level of activity on the part of the Court has been made possible thanks to a significant number of steps it has taken over recent years to enhance its efficiency and thereby enable it to cope with the steady increase in its workload. The Court continually re-examines its procedures and working methods and regularly updates its practice directions (adopted in 2001) for use by States appearing before it. Moreover, it sets itself a particularly demanding schedule of hearings and deliberations, in order that it may consider several cases at the same time and deal as promptly as possible with incidental proceedings (requests for the indication of provisional measures; counter-claims; applications for permission to intervene), which are growing in number..

20. During the period under review, the Registry maintained the high-level of effectiveness that makes its support essential to the proper functioning of the Court. In addition, several important amendments to the Staff Regulations for the Registry were promulgated by the Registrar or submitted by him to the Court for approval. In order to further increase efficiency, the Registrar also drew up a revised version of the Instructions for the Registry, which was approved by the Court (see paras. 66 and 70 below).

21. The Court has successfully cleared its backlog of cases, and States considering coming to the principal judicial organ of the United Nations can now be confident that, as soon as the written phase of the proceedings has come to a close, the Court will be able to move to the oral proceedings in a timely manner.

Human resources: establishment of posts

22. The Court is grateful to the General Assembly for the posts it has approved for the current biennium. In its budget submission for the biennium 2012-2013, the Court sought the establishment of a P-3 security specialist post and of an information security assistant post in the General Service category. The Assembly decided to award these two posts to the Court for the current biennium. The recruitment procedure for filling the P-3 post took place in May 2012, and a new staff member is expected to be appointed to that post shortly. The recruitment procedure for the post in the General Service category is currently under way.

23. In its budget submission for the biennium 2012-2013, the Court also sought the establishment of a publications assistant post in the General Service category within the Publications Division. The General Assembly granted the Court's request and the post was filled in May 2012.

24. Unfortunately, the Court was not granted the associate legal officer post (P-2) within the Department of Legal Matters, the creation of which it had requested in its budget submission for the biennium 2012-2013. This post has become necessary because of the growing complexity (both factual and legal) of the cases submitted to the Court, the increase in the number of incidental proceedings (in the handling of which the Department of Legal Matters plays a very substantial role), and the Court's decision to deliberate on several cases at the same time in order to avoid any backlog (with the result that some of the drafting committees, whose work requires

assistance from the Department of Legal Matters, are sitting simultaneously). The creation of this post would have put the current members of the Department in a better position to cope with the increase in the legal duties related to the handling of cases submitted to the Court. The incumbent of the new post would have essentially concentrated on the other legal activities for which the Department is responsible, such as the drafting of correspondence and minutes of Court meetings, the selection of documents for publication in the series *I.C.J. Pleadings, Oral Arguments, Documents* and general legal assistance to the other departments and divisions of the Registry, in particular with regard to external contracts and questions relating to the terms of employment of staff.

Modernization of the Great Hall of Justice in the Peace Palace

25. The Court had also requested and received from the General Assembly, at the end of 2009, an appropriation of a significant amount for the replacement and modernization of the audiovisual equipment in its historic courtroom (the Great Hall of Justice in the Peace Palace) and the Press Room, to be spent during the biennium 2010-2011. All of the equipment for which funding was approved by the General Assembly was purchased in December 2011. At the end of the period under review, the Great Hall of Justice was undergoing renovation, in collaboration with the Carnegie Foundation, which owns the building.

Pension scheme for members of the Court

26. The Court will avail itself of the opportunity furnished by the submission of the present report to express its concern regarding certain proposals relating to the pension scheme for judges made during the period under review. Although those proposals seem to have been initially designed as part of efforts to contain expenditure associated with the ad hoc tribunals, the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, they were extended virtually automatically to the Court and submitted to the General Assembly (A/66/617). In the view of the Court, this approach is highly problematic. On the one hand, it appears that the planned reform, despite its original purpose, will ultimately affect only the Court. On the other hand, it is obvious that the reform is ill-adapted to the specific nature of the principal judicial organ of the United Nations, which, unlike the above-mentioned tribunals, deals with disputes between equal and sovereign States.

27. In view of the serious issues raised by the proposals in question from the perspective of the integrity of the Statute of the Court and the status of its members, the Court considered it necessary to convey its deep concern to the Assembly by means of a letter from its President accompanied by an explanatory memorandum (A/66/726).

28. The Court first noted, as recalled above, that with the impending closure of the two above-mentioned ad hoc tribunals, the proposed amendment of the pension scheme would effectively relate solely to members of the Court. Under Article 32 of the Court's Statute, the pensions of members of the Court may not be decreased during their term of office. Therefore, as the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions stressed in their respective reports on the matter to the General Assembly at its sixty-fifth session (A/65/134 and Corr.1 and A/65/533), the proposed change, if approved, could not impact upon

the pensions of serving or retired judges. Since the election of new members of the Tribunals is not envisaged, the only persons to whom the new scheme would apply would be future judges of the Court.

29. In its explanatory memorandum, the Court set out the main difficulties that the proposed changes to the pension scheme for judges would undoubtedly cause in respect of the Statute of the Court, which is an integral part of the Charter of the United Nations. The Court noted that those changes would call into question such fundamental principles as the independence of judges vis-à-vis the States of which they are nationals, equality between judges, the nine-year term as an autonomous career, the regular rotation of the bench and the universal character of the Court. The Court emphasized the incalculable consequences that the planned technical measures are likely to have on the functioning of the world's highest judicial body, which is increasingly busy and exceptionally cost-effective (the Court's budget as a principal organ represents less than 1 per cent of the regular budget of the United Nations).

30. In view of the important issues at stake, the Court concluded its explanatory memorandum by requesting the General Assembly, in considering its decision on a new scheme "to carefully balance, on the one hand, the disadvantages in terms of the integrity of the constitutional status of the Court and its members, as well as the attractiveness and long-term efficiency of the principal judicial organ of the United Nations, against, on the other hand, the savings envisaged, which in this case would be minimal, given the very small number of persons actually concerned". The Court is grateful to the Assembly for the special attention it has paid to the issue, and the decision it has taken, on the recommendation of its Fifth Committee, to allow itself time for reflection and to defer session consideration of the issue until its sixty-eighth (A/66/638/Add.1).

Promoting the rule of law

31. The Court welcomes the fact that, by the adoption of its resolution 66/102, the General Assembly invited the President of the Court to speak at the plenary of the high-level meeting on the rule of law at the national and international levels on 24 September 2012. It takes this opportunity afforded by the submission of its annual report to the Assembly to comment on its current role in the promotion of the rule of law.

32. In February 2008, the Court completed a questionnaire received from the Codification Division of the United Nations Office of Legal Affairs, and its responses remain largely relevant today. In this connection, it should be kept in mind that the Court, as a court of justice and, moreover, the principal judicial organ of the United Nations, occupies a special position. The Court reiterates that everything it does is aimed at promoting the rule of law: it hands down judgments and gives advisory opinions in accordance with its Statute, and thus contributes to promoting and clarifying international law. It also ensures the greatest possible global awareness of its decisions through its publications, its multimedia offerings and its website, which now features the entire body of its jurisprudence — as well as that of its predecessor, the Permanent Court of International Justice — and which provides useful information for States wishing to submit a potential dispute to the Court.

33. Members of the Court and the Registrar, as well as the Registry's Information Department and its Department of Legal Matters, regularly give presentations on the functioning of the Court, its procedure and its jurisprudence. Moreover, the Court receives a very large number of visitors every year. In addition, the Court offers an internship programme that enables students from various backgrounds to familiarize themselves with the institution and thereby further their knowledge of international law.

34. In conclusion, the International Court of Justice welcomes the reaffirmed confidence that States have shown in its ability to resolve disputes. The Court will give the same meticulous and impartial attention to cases coming before it in the 2012-2013 judicial year, as it has always done in the past.

Chapter II
Organization of the Court

A. Composition

35. At 31 July 2012, the composition of the Court was as follows: President, Peter Tomka; Vice-President, Bernardo Sepúlveda-Amor; Judges, Hisashi Owada, Ronny Abraham, Kenneth Keith, Mohamed Bennouna, Leonid Skotnikov, Antônio Augusto Cançado Trindade, Abdulqawi Ahmed Yusuf, Christopher Greenwood, Xue Hanqin, Joan E. Donoghue, Giorgio Gaja, Julia Sebutinde and Dalveer Bhandari.

36. The Registrar of the Court is Philippe Couvreur. The Deputy-Registrar is Thérèse de Saint Phalle.

37. In accordance with Article 29 of the Statute, the Court annually forms a Chamber of Summary Procedure, which, at 31 July 2012, was constituted as follows:

Members

President Tomka
Vice-President Sepúlveda-Amor
Judges Yusuf, Xue and Donoghue

Substitute members

Judges Skotnikov and Gaja.

38. In accordance with Article 31 of the Statute, parties that have no judge of their nationality on the bench may choose an ad hoc judge for the purposes of the case that concerns them.

39. In the case concerning *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, Guinea chose Mohammed Bedjaoui to sit as judge ad hoc; following the latter's resignation, it chose Ahmed Mahiou. The Democratic Republic of the Congo chose Auguste Mampuya Kanunk'a Tshiabo to sit as judge ad hoc.

40. In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, the Democratic Republic of the Congo chose Joe Verhoeven and Uganda James L. Kateka to sit as judges ad hoc.

41. In the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)*, Croatia chose Budislav Vukas and Serbia Milenko Kreća to sit as judges ad hoc.

42. In the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Nicaragua chose Mohammed Bedjaoui to sit as judge ad hoc; following the latter's resignation, it chose Giorgio Gaja. Following Mr. Gaja's election as a member of the Court, it chose Thomas A. Mensah.[2] Colombia chose Yves L. Fortier to sit as judge ad hoc; following the latter's resignation, it chose Jean-Pierre Cot.

43. In the case concerning the *Maritime Dispute (Peru* v. *Chile)*, Peru chose Gilbert Guillaume and Chile Francisco Orrego Vicuña to sit as judges ad hoc.

[2] In view of Nicaragua's choice, Judge Gaja considered it appropriate for him not to take part in any other proceedings concerning the case.

44. In the case concerning *Aerial Herbicide Spraying (Ecuador* v. *Colombia)*, Ecuador chose Raúl Emilio Vinuesa and Colombia Jean-Pierre Cot to sit as judges ad hoc.

45. In the case concerning the *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*, the former Yugoslav Republic of Macedonia chose Budislav Vukas and Greece Emmanuel Roucounas to sit as judges ad hoc.

46. In the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*, Italy chose Giorgio Gaja to sit as judge ad hoc.

47. In the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*, Belgium chose Philippe Kirsch and Senegal Serge Sur to sit as judges ad hoc.

48. In the case concerning *Whaling in the Antarctic (Australia* v. *Japan)*, Australia chose Hilary Charlesworth to sit as judge ad hoc.

49. In the case concerning the *Frontier Dispute (Burkina Faso/Niger)*, Burkina Faso chose Jean-Pierre Cot to sit as judge ad hoc. Following the latter's resignation, Burkina Faso chose Yves Daudet. Niger chose Ahmed Mahiou to sit as judge ad hoc.

50. In the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*, Costa Rica chose John Dugard and Nicaragua Gilbert Guillaume to sit as judges ad hoc.

51. In the case concerning the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand) (Cambodia* v. *Thailand)*, Cambodia chose Gilbert Guillaume and Thailand Jean-Pierre Cot to sit as judges ad hoc.

52. In the case concerning *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica)*, Nicaragua chose Gilbert Guillaume and Costa Rica Bruno Simma to sit as judges ad hoc.

B. Privileges and immunities

53. Article 19 of the Statute of the Court provides: "The Members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities."

54. In the Netherlands, pursuant to an exchange of letters dated 26 June 1946 between the President of the Court and the Minister for Foreign Affairs, the members of the Court enjoy, generally, the same privileges, immunities, facilities and prerogatives as heads of diplomatic missions accredited to Her Majesty the Queen of the Netherlands (I.*C.J. Acts and Documents No. 6*, pp. 204-211 and pp. 214-217).

55. By resolution 90 (I) of 11 December 1946 (ibid., pp. 210-215), the General Assembly approved the agreements concluded with the Government of the Netherlands in June 1946 and recommended the following: if a judge, for the purpose of holding himself permanently at the disposal of the Court, resides in some country other than his own, he should be accorded diplomatic privileges and immunities during the period of his residence there; and judges should be accorded every facility for leaving the country where they may happen to be, for entering the

country where the Court is sitting, and again for leaving it. On journeys in connection with the exercise of their functions, they should, in all countries through which they may have to pass, enjoy all the privileges, immunities and facilities granted by these countries to diplomatic envoys.

56. In the same resolution, the General Assembly recommended that the authorities of the States Members of the United Nations recognize and accept United Nations laissez-passer issued to the judges by the Court. Such laissez-passer have been issued by the Court since 1950. They are similar in form to those issued by the Secretary-General.

57. Furthermore, Article 32, paragraph 8, of the Statute provides that the "salaries, allowances and compensation" received by judges and the Registrar "shall be free of all taxation".

Chapter III
Jurisdiction of the Court

A. Jurisdiction of the Court in contentious cases

58. As at 31 July 2012, 193 States were parties to the Statute of the Court (the 193 States Members of the United Nations).

59. A total of 67 States have now made a declaration (some with reservations) recognizing as compulsory the jurisdiction of the Court, as contemplated by Article 36, paragraphs 2 and 5, of the Statute. They are: Australia, Austria, Barbados, Belgium, Botswana, Bulgaria, Cambodia, Cameroon, Canada, Costa Rica, Côte d'Ivoire, Cyprus, the Democratic Republic of the Congo, Denmark, Djibouti, Dominica, the Dominican Republic, Egypt, Estonia, Finland, Gambia, Georgia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Ireland, Japan, Kenya, Lesotho, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, the Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, the Philippines, Poland, Portugal, Senegal, Slovakia, Somalia, Spain, the Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Uganda, the United Kingdom of Great Britain and Northern Ireland and Uruguay. The texts of the declarations filed by the above States can be found on the Court's website (www.icj-cij.org, under the heading "Jurisdiction").

60. Further, there are currently in force some 300 multilateral and bilateral conventions providing for the jurisdiction of the Court. A representative list of those treaties and conventions may also be found on the Court's website (under the heading "Jurisdiction").

B. Jurisdiction of the Court in advisory proceedings

61. In addition to United Nations organs (the General Assembly and the Security Council, which are authorized to request advisory opinions of the Court "on any legal question", the Economic and Social Council, the Trusteeship Council and the Interim Committee of the General Assembly), the following organizations are at present authorized to request advisory opinions of the Court on legal questions arising within the scope of their activities:

Food and Agriculture Organization of the United Nations International Atomic Energy Agency

International Civil Aviation Organization

International Development Association

International Finance Corporation

International Fund for Agricultural Development

International Labour Organization

International Maritime Organization

International Monetary Fund

International Telecommunication Union

United Nations Educational, Scientific and Cultural Organization

United Nations Industrial Development Organization

World Bank

World Health Organization

World Intellectual Property Organization

World Meteorological Organization

62. A list of the international instruments that make provision for the advisory jurisdiction of the Court is available on the Court's website (www.icj-cij.org, under the heading "Jurisdiction").

Chapter IV
Functioning of the Court

A. Committees constituted by the Court

63. The committees constituted by the Court to facilitate the performance of its administrative tasks met regularly during the period under review; as at 31 July 2012, they were composed as follows:

(a) Budgetary and Administrative Committee: President Tomka (Chair), Vice-President Sepúlveda-Amor and Judges Abraham, Bennouna, Yusuf, Greenwood and Xue;

(b) Library Committee: Judge Bennouna (Chair) and Judges Cançado Trindade, Gaja and Bhandari.

64. The Rules Committee, constituted by the Court in 1979 as a standing committee, also met a number of times during the period under review; at 31 July 2012, it was composed of Judge Abraham (Chair) and Judges Keith, Skotnikov, Cançado Trindade, Donoghue and Gaja.

B. Registry

65. The Court is the only principal organ of the United Nations to have its own administration (see Article 98 of the Charter). The Registry is the permanent international secretariat of the Court. Its role is defined by the Statute and the Rules of Court (in particular Articles. 22-29 of the Rules). Since the Court is both a judicial body and an international institution, the role of the Registry is both to provide judicial support and to act as a permanent administrative organ. The Registry's activities are thus administrative, as well as judicial and diplomatic. The organization of the Registry is prescribed by the Court on proposals submitted by the Registrar. An organization chart of the Registry is contained in the annex to the present report.

66. The duties of the Registry are set out in detail in instructions drawn up by the Registrar and approved by the Court (see Rules, Article 28, paras. 2 and 3). On 20 March 2012, the Court adopted a revised version of the Instructions for the Registry. The instructions previously in force were approved in October 1946 and amended slightly in March 1947 and September 1949. They had remained unchanged since then and were out of date in many respects. A review of those instructions was therefore needed; that led the Registrar to draw up a new version, which was submitted to the Rules Committee and subsequently approved by the Court, on the recommendation of the Committee.

67. Registry officials are appointed by the Court on proposals by the Registrar or, for General Service staff, by the Registrar with the approval of the President. Short-term staff are appointed by the Registrar. Working conditions are laid down in the Staff Regulations adopted by the Court (see Article 28 of the Rules). Registry officials enjoy, generally, the same privileges and immunities as members of diplomatic missions in The Hague of comparable rank. They enjoy a status, remuneration and pension rights corresponding to those of Secretariat officials of the equivalent category or grade.

68. Over the past 20 years, the Registry's workload, notwithstanding the adoption of new technologies, has grown considerably owing to the substantial increase in the number of cases brought before the Court and their mounting complexity.

69. At present, the total number of posts at the Registry is 118, namely, 60 posts in the Professional category and above (all permanent posts) and 58 in the General Service category (of which 56 are permanent and 2 are temporary posts for the biennium).

70. On 17 March 2011, the Registrar promulgated a number of important amendments to the Staff Regulations for the Registry in order to render applicable to Registry staff various rules and regulations of the United Nations Staff Regulations and Staff Rules that came into force at the United Nations Secretariat in July 2009. In addition, the Registrar submitted to the Court a draft revision of the provisions of the Staff Regulations relating to disciplinary measures, with a view to clarifying them and to ensuring greater legal security for the staff in that regard. On 20 March 2012, a new disciplinary system applicable to Registry staff was adopted by the Court.

71. Further to the adoption by the United Nations of a new internal justice system, the specific appeals system for Registry staff members had to be restructured slightly. In 1998, the Court recognized the jurisdiction of the United Nations Administrative Tribunal; this has been replaced in the new system by the United Nations Appeals Tribunal. By means of an exchange of letters, over the period from 20 April to 10 June 2011, between the President of the Court and the Secretary-General, the Court has provisionally recognized the jurisdiction of the Appeals Tribunal to rule on applications by Registry staff members in circumstances similar to those in which it had previously recognized the jurisdiction of the United Nations Administrative Tribunal (failure of conciliation proceedings).

1. The Registrar

72. The Registrar is responsible for all departments and divisions of the Registry, of which he is the head. In the discharge of his functions the Registrar is responsible to the Court. His role is threefold: judicial, diplomatic and administrative.

73. The Registrar's judicial duties notably include those relating to the cases submitted to the Court. The Registrar is responsible, among other things, for the following tasks: (a) keeping the General List of all cases and is responsible for recording documents in the case files; (b) managing the proceedings in the cases; (c) being present in person, or being represented by the Deputy-Registrar, at meetings of the Court and of Chambers, providing any assistance required, including the preparation of reports or minutes of such meetings; (d) signing all judgments, advisory opinions and orders of the Court, as well as minutes; (e) maintaining relations with the parties to a case, with specific responsibility for the receipt and transmission of certain documents, most importantly, applications and special agreements, as well as all written pleadings; (f) ensuring the translation, printing and publication of the Court's judgments, advisory opinions and orders, the pleadings, written statements and minutes of the public sittings in every case, and of such other documents as the Court may direct to be published; and (g) maintaining custody of the seals and stamps of the Court, the archives of the Court and other such archives as may be entrusted to the Court (including the archives of the Nuremberg International Military Tribunal).

74. The Registrar's diplomatic duties include the following tasks: (a) attending to the Court's external relations and acting as the channel of communication to and from the Court; (b) managing external correspondence, including that relating to cases, and providing any consultations required; (c) managing relations of a diplomatic nature, in particular with the organs and with the States Members of the United Nations, with other international organizations and with the Government of the country in which the Court has its seat; (d) maintaining relations with the local authorities and with the press; and (e) being responsible for information concerning the Court's activities and for the Court's publications, as well as for press releases, among other things.

75. The Registrar's administrative duties include: (a) the Registry's internal administration; (b) financial management, in accordance with the financial procedures of the United Nations, and in particular preparing and implementing the budget; (c) supervision of all administrative tasks and of printing; and (d) making arrangements for such provision or verification of translations and interpretations into the Court's two official languages (English and French) as the Court may require.

76. Pursuant to the exchange of letters and General Assembly resolution 90 (I) as referred to in paragraphs 55 and 56 above, the Registrar is accorded the same privileges and immunities as heads of diplomatic missions in The Hague and, on journeys to third States, all the privileges, immunities and facilities granted to diplomatic envoys.

2. The Deputy-Registrar

77. The Deputy-Registrar assists the Registrar and acts as Registrar in the latter's absence. Since 1998 the Deputy-Registrar has been entrusted with wider administrative responsibilities, including direct supervision of the Archives, Indexing and Distribution Division and the Information and Communications Technology Division.

3. Substantive divisions and units of the Registry

Department of Legal Matters

78. The Department of Legal Matters, composed of eight posts in the Professional category and one in the General Service category, is responsible, under the direct supervision of the Registrar, for all legal matters within the Registry. In particular, its task is to assist the Court in the exercise of its judicial functions. It acts as secretariat to the drafting committees, which prepare the Court's draft decisions. The Department also acts as secretariat to the Rules Committee. It carries out research in international law, examining judicial and procedural precedents, and prepares all studies and notes for the Court and the Registrar as required. It prepares for signature by the Registrar all correspondence in pending cases and, more generally, diplomatic correspondence relating to the application of the Statute or the Rules of Court. It is also responsible for monitoring the Headquarters agreements with the host country. Further, it draws up the minutes of the Court's meetings. Finally, the Department may be consulted on any legal questions relating to external contracts and to the terms of employment of Registry staff.

Department of Linguistic Matters

79. The Department of Linguistic Matters, comprises 17 posts in the Professional category and one in the General Service category, and is primarily responsible for all translation and interpretation tasks, to and from English and French, as required for the functioning of the Court. The Department is also responsible for providing the judges with any linguistic support they may need. The Court works equally in its two official languages at all stages of its activity.

80. Documents to be translated include: case pleadings and other communications from States, organs or organizations appearing before the Court; verbatim records of hearings; draft judgments, advisory opinions and orders of the Court, together with their various working documents; judges' notes and their opinions and declarations appended to judgments, advisory opinions and orders; minutes of meetings of the Court and of its committees; internal reports, notes, studies, memorandums and directives; speeches by the President and judges to outside bodies; reports and communications to the Secretariat, etc.

81. The Department also provides interpretation at private and public meetings of the Court and, as required, at meetings held by the President and members of the Court with agents of the parties and other official visitors.

82. Following the creation, in 2000, of 12 translator and translator/reviser posts within the Department, there was initially a substantial decrease in recourse to outside translators. However, in view of the increase in the Court's workload, the need for external support has begun to rise again. The Department has done its best to make use of home translation (paid by the word and traditionally less expensive than bringing freelance translators in to work in the Registry on temporary contracts) and remote translation (performed by other language services within the United Nations system). Nevertheless, recourse to temporary assistance is still significant and may be a source of increased spending in the future.

83. The Department has reached an arrangement with the United Nations Office at Geneva, that enables it (once a year at present) to make use of a senior reviser on secondment from Geneva; this system has clear benefits for both departments involved: the reviser provides valuable support to the Registry while acquiring knowledge which can subsequently be put to use at the United Nations Office at Geneva.

84. In respect of interpretation, outside interpreters are almost exclusively used for Court hearings and deliberations; however, in order to reduce costs, achieve greater flexibility in the event of changes to the Court's schedule and ensure more effective synergy between the various tasks of the Department, the Department has initiated a programme to train translators as interpreters; one English-to-French translator has already qualified as an interpreter at the requisite professional level.

Information Department

85. The Information Department, composed of three posts in the Professional category and one in the General Service category, plays an important part in the Court's external relations. Its duties consist of replying to requests for information on the Court, preparing all documents containing general information on the Court (in particular the annual report of the Court to the General Assembly, the *Yearbook*, and handbooks for the general public), and encouraging and assisting the media to

report on the work of the Court (for example, by developing new communications products, particularly in the audiovisual field). The Department gives presentations on the Court to various interested audiences (diplomats, lawyers, students and others) and is responsible for keeping the Court's website up to date. Its duties also extend to internal communication.

86. The Information Department is also responsible for organizing the public sittings of the Court and all other official events, in particular a large number of visits, including those by distinguished guests. On those occasions it serves as a protocol office.

Administrative and Personnel Division

87. The Administrative and Personnel Division, currently composed of two posts in the Professional category and nine in the General Service category, is responsible for the various duties related to administration and staff management, including planning and implementation of staff recruitment, appointments, promotions, training and separation from service. In its staff-management functions, it ensures observance of the Staff Regulations for the Registry and of those United Nations Staff Regulations and Rules which the Court has determined to be applicable. As part of its recruitment tasks, the Division prepares vacancy announcements, reviews applications, arranges interviews for the selection of candidates, prepares contracts for successful candidates and handles the intake of new staff members. The Division also administers staff entitlements and various benefits, is responsible for the follow-up to relevant administrative notices and maintains liaison with the Office of Human Resources Management of the United Nations Secretariat and the United Nations Joint Staff Pension Fund.

88. The Division is also responsible for procurement, inventory control and, in liaison with the Carnegie Foundation, which owns the Peace Palace building, building-related matters. It also oversees the General Assistance Division, which, under the responsibility of a coordinator, provides general assistance to members of the Court and Registry staff in regard to messenger, transport and reception services.

Finance Division

89. The Finance Division, composed of one post in the Professional category and two in the General Service category, is responsible for financial matters. In particular, its duties include preparing the draft budget, ensuring that the budget is properly implemented, keeping the financial accounting books, financial reporting, managing vendor payments and payroll and carrying out payroll-related operations for members of the Court and Registry staff (e.g., various allowances and expense reimbursements). The Division is also responsible for paying the pensions of retired members of the Court, for treasury and banking matters and for maintaining regular contact with the tax authorities of the host country.

Publications Division

90. The Publications Division, composed of three posts in the Professional category and, since May 2012, one post in the General Service category, is responsible for the preparation of texts, proofreading and correction of proofs, study of estimates and choice of printing firms in relation to the following official publications of the Court: (a) *Reports of Judgments, Advisory Opinions and Orders*;

(b) *Pleadings, Oral Arguments, Documents*; (c) *Acts and Documents concerning the Organization of the Court*; (d) *Bibliographies*; and (e) *Yearbooks*. It is also responsible for various other publications as instructed by the Court or the Registrar. In addition, the Division is responsible for the preparation, conclusion and implementation of contracts with printers, including control of all invoices. In view of the increased workload of the Publications Division, the Court requested, for the biennium 2012-2013, the establishment of a post of publications assistant (General Service, Other Level) within the Division. The post was approved for the current biennium. For more information on the Court's publications, see chapter VII below.

Documents Division and Library of the Court

91. The Documents Division, composed of two posts in the Professional category and four in the General Service category, has as its main task acquiring, conserving, classifying and making available the leading works on international law, as well as a significant number of periodicals and other relevant documents. The Division prepares bibliographies on cases brought before the Court, and other bibliographies as required. It also assists the translators with their reference needs. The Division provides access to an increasing number of databases and online resources in partnership with the United Nations System Electronic Information Acquisition Consortium, as well as to a comprehensive collection of electronic documents of relevance for the Court. The Division has acquired integrated software for managing its collection and operations. In September 2011, the Library of the Court launched its online catalogue, which is accessible to all members of the Court and Registry staff. A number of resources are now available on the Court's Intranet pages. The Documents Division operates in close collaboration with the Peace Palace Library of the Carnegie Foundation.

92. The Division is also responsible for the Archives of the Nuremberg International Military Tribunal (including paper documents, gramophone records, films and certain objects). A project to conserve and digitize these archives is currently under way.

Information and Communications Technology Division

93. The Information and Communications Technology Division, composed of two posts in the Professional category and four in the General Service category, is responsible for the efficient functioning of information and communications technology at the Court. Its mission is to support the judicial work of the members of the Court and the various activities of the Registry by providing appropriate and effective information technology resources. The Division offers personalized assistance to users and ensures information system security.

94. The Division is charged in particular with the administration and functioning of the Court's servers, with the maintenance and inventory of equipment and with the management of the local and wide-area networks, including the communications systems. The Division implements mechanisms to monitor the security of its information system and systematically keeps abreast of new technologies enabling it to track developing risks. Finally, it advises and trains users in all aspects of information technology and fosters communication between itself and the various departments and divisions of the Registry.

Archives, Indexing and Distribution Division

95. The Archives, Indexing and Distribution Division, composed of one post in the Professional category and five in the General Service category, is responsible for indexing, classifying and storing all correspondence and documents received or sent by the Court, and for the subsequent retrieval of any such item as required. The duties of this Division include, in particular, the keeping of an up-to-date index of incoming and outgoing correspondence, as well as of all documents, both official and otherwise, held on file. It is also responsible for checking, distributing and filing all internal documents, some of which are strictly confidential. The Division now has a computerized records management system for both internal and external documents.

96. The Division also handles the dispatch of the Court's official publications to Members of the United Nations, as well as to numerous institutions and various individuals.

Text Processing and Reproduction Division

97. The Text Processing and Reproduction Division is composed of one post in the Professional category and nine in the General Service category. It is responsible for the typing, formatting and printing of the Court's judgments, advisory opinions and orders, in the two official languages of the Court, while ensuring that documents conform to the Court's house style and layout.

98. It processes correspondence, minutes, press releases, translations of written pleadings and annexes, verbatim records of hearings and their translations, and translations of judges' notes and opinions and of their amendments to draft decisions. It is also responsible for reviewing various documents and checking certain quotations.

Security Division

99. The Security Division is a new division which reports directly to the Registrar and is composed of one post in the Professional category and four in the General Service category. Its main duties include: ensuring the security of the Court, its members, staff and property; establishing security policies and procedures; and contributing to the security of the information technology system. To that end, it works with the relevant divisions of the organization and the authorities of the Netherlands.

100. The P-3 post of head of division is expected to be filled shortly, while the recruitment procedure for the post of information security assistant in the General Service category is currently under way. The three security guards, already employed at the Court, have been transferred to this Division.

Law clerks and the Special Assistant to the President

101. The President of the Court is aided by a special assistant (P-3), who is administratively attached to the Department of Legal Matters. Since the approval by the General Assembly of six additional associate legal officer posts (P-2) for the biennium 2010-2011, the other members of the Court are now each assisted by a law clerk. These 14 associate legal officers, although seconded to the judges, are also officially members of the Registry staff, administratively attached to the Department

of Legal Matters. The law clerks carry out research for the Members of the Court and the judges ad hoc, and work under their responsibility.

102. In the first half of 2012, the Registry conducted a recruitment procedure aimed at filling five vacant law clerk posts.

Judges' secretaries

103. The 15 judges' secretaries, working under the authority of a coordinator, undertake manifold duties. In general, the secretaries are responsible for the typing of notes, amendments and opinions, as well as all correspondence of judges and judges ad hoc. They assist the judges in the management of their work diary and in the preparation of relevant papers for meetings, as well as in dealing with visitors and enquiries.

Senior Medical Officer

104. Since 1 May 2009, the Registry has employed a senior medical officer (quarter-time contract), paid out of the temporary assistance appropriation. The senior medical officer conducts emergency and periodic medical examinations, and initial medical examinations for new staff. Between 1 August 2011 and 31 July 2012, 219 medical consultations were conducted by the Medical Unit, including nine initial medical examinations for new staff and six periodic medical examinations (security officers and drivers). The senior medical officer advises the Registry administration on health and hygiene matters, work-station ergonomics and working conditions. Finally, he/she organizes information, screening, prevention and vaccination campaigns.

4. Staff Committee

105. The Registry Staff Committee was established in 1979 and is governed by article 9 of the Staff Regulations for the Registry. During the period under review, the Committee worked in constructive partnership with management, seeking to promote dialogue and a listening attitude within the Registry, and continued its exchanges with staff committees of other international organizations. Notably, it published on the Court's Intranet *Scripta Manent*, the first collection of all the texts governing the activity of the Registry Staff Committee. A new Committee was elected to serve a three-year term as from 1 December 2011.

C. Seat

106. While the seat of the Court is established at The Hague, this fact does not prevent the Court from sitting and exercising its functions elsewhere whenever it considers it desirable to do so (Statute, Article 22, para. 1; Rules, Article 55). Thus far, the Court has never held sittings outside The Hague.

107. The Court occupies premises in the Peace Palace at The Hague. An agreement of 21 February 1946 between the United Nations and the Carnegie Foundation, which is responsible for the administration of the Peace Palace, determines the conditions under which the Court uses the premises and provides, in exchange, for the payment to the Carnegie Foundation of an annual contribution. That contribution was increased pursuant to supplementary agreements approved by the General

Assembly in 1951 and 1958, as well as subsequent amendments. The annual contribution by the United Nations to the Carnegie Foundation amounts to €1,264,152 euros for 2012. Negotiations are currently under way between United Nations Headquarters and the Carnegie Foundation for a further amendment to the agreement, in particular concerning the extent and quality of the areas reserved for the Court, security of persons and property and the level of services provided by the Carnegie Foundation.

D. Peace Palace Museum

108. In 1999, the Secretary-General of the United Nations inaugurated the museum of the International Court of Justice in the south wing of the Peace Palace. Plans are currently being developed to refurbish and modernize the museum and to facilitate public access to the historical items exhibited inside.

Chapter V
Judicial work of the Court

A. General overview

109. During the period under review, 15 contentious cases and one advisory procedure were pending before the Court; 11 contentious cases remain so as at 31 July 2012.

110. During this same period, one new contentious case was submitted to the Court concerning the *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica*).

111. During 2011-2012, the Court held public hearings in the three following cases (in chronological order):

Jurisdictional Immunities of the State (Germany v. *Italy: Greece intervening)*;

Questions relating to the Obligation to Prosecute or Extradite (Belgium v. *Senegal)*;

Territorial and Maritime Dispute (Nicaragua v. *Colombia)*.

112. During the period under review, the Court delivered four judgments, in the following cases (in chronological order):

Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. *Greece)*;

Jurisdictional Immunities of the State (Germany v. *Italy: Greece intervening)*;

Ahmadou Sadio Diallo (Republic of Guinea v. *Democratic Republic of the Congo)*, question of compensation;

Questions relating to the Obligation to Prosecute or Extradite (Belgium v. *Senegal)*.

113. The Court also handed down an advisory opinion on *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development*.

114. The Court made orders fixing time limits for the filing of written pleadings in each of the following cases (in chronological order):

Ahmadou Sadio Diallo (Republic of Guinea v. *Democratic Republic of the Congo)*, question of compensation;

Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. *Costa Rica)*.

115. By an Order dated 23 January 2012, the Court authorized the submission by Croatia of an additional written pleading relating solely to the counter-claims submitted by Serbia in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)*.

116. By an order dated 19 October 2011, the President of the Court extended the time limit for the filing of a rejoinder by Colombia in the case concerning *Aerial Herbicide Spraying (Ecuador* v. *Colombia)*.

B. Pending contentious proceedings during the period under review

1. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*

117. On 2 July 1993, Hungary and Slovakia jointly notified the Court of a special agreement, signed on 7 April 1993, for the submission of certain issues arising out of differences regarding the implementation and the termination of the Treaty of 16 September 1977 on the construction and operation of the Gabčíkovo-Nagymaros barrage system (see annual report for 1992-1993). In its judgment of 25 September 1997, the Court found that both Hungary and Slovakia had breached their legal obligations. It called upon both States to negotiate in good faith in order to ensure the achievement of the objectives of the 1977 Treaty, which it declared was still in force, while taking account of the factual situation that had developed since 1989. On 3 September 1998, Slovakia filed in the Registry of the Court a request for an additional judgment in the case. Such an additional judgment was necessary, according to Slovakia, because of the unwillingness of Hungary to implement the judgment delivered by the Court in that case on 25 September 1997. Hungary filed a written statement of its position on the request for an additional judgment made by Slovakia within the time limit of 7 December 1998 fixed by the President of the Court. The parties have subsequently resumed negotiations and have informed the Court on a regular basis of the progress made. The President of the Court holds meetings with their agents when he deems it necessary. The case remains pending.

2. *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*

118. On 28 December 1998, Guinea filed in the Registry an application instituting proceedings against the Democratic Republic of the Congo in respect of a dispute concerning "serious breaches of international law" alleged to have been committed "upon the person of a Guinean national", Ahmadou Sadio Diallo (see annual report 1998-1999 et seq.).

119. Guinea filed its memorial within the time limit as extended by the Court. On 3 October 2002, within the time limit as extended for the filing of its counter-memorial, the Democratic Republic of the Congo raised a number of preliminary objections in respect of the admissibility of the application.

120. On 24 May 2007, the Court rendered a judgment declaring Guinea's application to be admissible insofar as it concerned protection of Mr. Diallo's rights as an individual and of his direct rights as *associé* in Africom-Zaire and Africontainers-Zaire, but inadmissible insofar as it concerned protection of Mr. Diallo in respect of alleged violations of the rights of Africom-Zaire and Africontainers-Zaire.

121. By an order of 27 June 2007, the Court fixed 27 March 2008 as the time limit for the filing of a counter-memorial by the Democratic Republic of the Congo. The counter-memorial was filed within the time limit thus fixed. By an order of 5 May 2008, the Court authorized the submission of a reply by Guinea and a Rejoinder by the Democratic Republic of the Congo. It fixed 19 November 2008 and 5 June 2009 as the respective time limits for the filing of those pleadings, which were filed within the time limits thus fixed.

122. Public hearings on the merits of the case took place from 19 to 29 April 2010. At the conclusion of their oral arguments, the parties presented their final submissions to the Court (see annual report 2009-2010 et seq.).

123. On 30 November 2010, the Court delivered its judgment on the merits, in which it: (a) found, by eight votes to six, that the claim of Guinea concerning the arrest and detention of Mr. Diallo in 1988-1989 was inadmissible; (b) found, unanimously, that, in respect of the circumstances in which Mr. Diallo was expelled from Congolese territory on 31 January 1996, the Democratic Republic of the Congo had violated article 13 of the International Covenant on Civil and Political Rights and article 12, paragraph 4, of the African Charter on Human and Peoples' Rights; (c) found, unanimously, that, in respect of the circumstances in which Mr. Diallo was arrested and detained in 1995-1996 with a view to his expulsion, the Democratic Republic of the Congo had violated article 9, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights and article 6 of the African Charter on Human and Peoples' Rights; (d) found, by 13 votes to 1, that, by not informing Mr. Diallo without delay, upon his detention in 1995-1996, of his rights under article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations, the Democratic Republic of the Congo had violated the obligations incumbent upon it under that subparagraph; (e) rejected, by 12 votes to 2, all other submissions by Guinea relating to the circumstances in which Mr. Diallo was arrested and detained in 1995-1996 with a view to his expulsion; (f) found, by 9 votes to 5, that the Democratic Republic of the Congo had not violated Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire; (g) found, unanimously, that the Democratic Republic of the Congo was under obligation to make appropriate reparation, in the form of compensation, to Guinea for the injurious consequences of the violations of international obligations referred to in subparagraphs (b) and (c) above; (h) decided, unanimously, that, failing agreement between the parties on this matter within six months from the date of 30 November 2010, the question of compensation due to Guinea would be settled by the Court, and reserved for this purpose the subsequent procedure in the case" (see annual report 2010-2011).

124. In its order of 20 September 2011, the Court noted that the time limit fixed by it in the operative part of its judgment had expired on 30 May 2011. It recalled that it had decided in that judgment that, having been sufficiently informed of the facts of the present case, a single exchange of written pleadings by the parties would be sufficient in order for it to decide on the amount of compensation due to Guinea. In the same order, the Court fixed 6 December 2011 and 21 February 2012 as the respective time limits for the filing of a memorial by Guinea and a counter-memorial by the Democratic Republic of the Congo on the above-mentioned question. Those pleadings were filed within the time limits thus fixed.

125. In the written proceedings relating to compensation, the parties presented the following final submissions to the Court:

On behalf of the Government of Guinea,

in the memorial:

"In compensation for the damage suffered by Mr. Ahmadou Sadio Diallo as a result of his arbitrary detentions and expulsion, the Republic of Guinea begs the Court to order the Democratic Republic of the Congo to pay it (on behalf of its national) the following sums:

– US$ 250,000 for mental and moral damage, including injury to his reputation;

– US$ 6,430,148 for loss of earnings during his detention and following his expulsion;

– US$ 550,000 for other material damage; and

– US$ 4,360,000 for loss of potential earnings

amounting to a total of eleven million five hundred and ninety thousand one hundred and forty-eight American dollars (US$11,590,148), not including statutory default interest.

"Furthermore, as a result of having been forced to institute the present proceedings, the Guinean State has incurred unrecoverable costs which it should not, in equity, be required to bear and which are assessed at US$ 500,000. The Republic of Guinea also begs the Court to order the DRC to pay it that sum.

"The Democratic Republic of the Congo should also be ordered to pay all the costs."

On behalf of the Government of the Democratic Republic of the Congo,

in the counter-memorial:

"Having regard to all of the arguments of fact and law set out ..., the Democratic Republic of the Congo asks the Court to adjudge and declare that:

(1) compensation in an amount of US$ 30,000 is due to Guinea to make good the non-pecuniary injury suffered by Mr. Diallo as a result of his wrongful detentions and expulsion in 1995-1996;

(2) no default interest is due on the amount of compensation as fixed above;

(3) the DRC shall have a time limit of six months from the date of the Court's judgment in which to pay to Guinea the above amount of compensation;

(4) no compensation is due in respect of the other material damage claimed by Guinea;

(5) each Party shall bear its own costs of the proceedings, including costs and fees of its counsel, advocates, advisers, assistants and others."

126. On 19 June 2012, the Court delivered its judgment on the question of the compensation owed by the Democratic Republic of the Congo to Guinea, the operative clause of which reads as follows:

"For these reasons,

The Court,

(1) By fifteen votes to one,

Fixes the amount of compensation due from the Democratic Republic of the Congo to Guinea for the non-material injury suffered by Mr. Diallo at US$ 85,000;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Mahiou;

AGAINST: *Judge* ad hoc Mampuya;

(2) By fifteen votes to one,

Fixes the amount of compensation due from the Democratic Republic of the Congo to Guinea for the material injury suffered by Mr. Diallo in relation to his personal property at US$ 10,000;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Mahiou;

AGAINST: *Judge* ad hoc Mampuya;

(3) By fourteen votes to two,

Finds that no compensation is due from the Democratic Republic of the Congo to Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a loss of professional remuneration during his unlawful detentions and following his unlawful expulsion;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Mampuya;

AGAINST: *Judge* Yusuf; *Judge* ad hoc Mahiou;

(4) Unanimously,

Finds that no compensation is due from the Democratic Republic of the Congo to Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a deprivation of potential earnings;

(5) Unanimously,

Decides that the total amount of compensation due under points 1 and 2 above shall be paid by 31 August 2012 and that, in case it has not been paid by this date, interest on the principal sum due from the Democratic Republic of the Congo to Guinea will accrue as from 1 September 2012 at an annual rate of 6 per cent;

(6) By fifteen votes to one,

Rejects the claim of Guinea concerning the costs incurred in the proceedings.

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Mampuya;

AGAINST: *Judge* ad hoc Mahiou."

Judge Cançado Trindade appended a separate opinion to the judgment of the Court; Judges Yusuf and Greenwood appended declarations to the

judgment of the Court; Judges ad hoc Mahiou and Mampuya appended separate opinions to the judgment of the Court.

3. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda*

127. On 23 June 1999, the Democratic Republic of the Congo filed an application instituting proceedings against Uganda for "acts of armed aggression perpetrated in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity" (see annual report 1998-1999 et seq.). Public hearings on the merits of the case were held from 11 to 29 April 2005.

128. In its application, the Democratic Republic of the Congo requested the Court to adjudge and declare that Uganda was guilty of an act of aggression contrary to Article 2, paragraph 4, of the Charter of the United Nations and that it was committing repeated violations of the Geneva Conventions of 1949 and the Additional Protocols of 1977. The Democratic Republic of the Congo further asked the Court to adjudge and declare that all Ugandan armed forces and Ugandan nationals, both natural and legal persons, should be withdrawn from Congolese territory; and that the Democratic Republic of the Congo was entitled to compensation (see annual report 1998-1999).

129. In its counter-memorial, filed on 20 April 2001, Uganda presented three counter-claims. The first concerned alleged acts of aggression against it by the Democratic Republic of the Congo; the second related to attacks on Ugandan diplomatic premises and personnel in Kinshasa and on Ugandan nationals for which the Democratic Republic of the Congo was alleged to be responsible; and the third dealt with alleged violations by the Democratic Republic of the Congo of the Lusaka Agreement (see annual report 2000-2001).

130. By an order of 29 November 2001 the Court found that the first two of the counter-claims submitted by Uganda against the Democratic Republic of the Congo were "admissible as such and [formed] part of the current proceedings", but that the third was not (see annual report, 2001-2002).

131. Public hearings on the merits of the case were held from 11 to 29 April 2005 (see annual report 2004-2005).

132. In the judgment which it rendered on 19 December 2005 (see annual report 2005-2006), the Court found in particular that Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending support to irregular forces having operated on the territory of the Democratic Republic of the Congo, had violated the principle of non-use of force in international relations and the principle of non-intervention; that it had violated, in the course of hostilities between Ugandan and Rwandan military forces in Kisangani, its obligations under international human rights law and international humanitarian law; that it had violated, by the conduct of its armed forces towards the Congolese civilian population and in particular as an occupying Power in Ituri district, other obligations incumbent on it under international human rights law and international humanitarian law; and that it had violated its obligations under international law by acts of looting, plundering and exploitation of Congolese natural resources committed by members of its armed

forces in the territory of the Democratic Republic of the Congo and by its failure to prevent such acts as an occupying Power in Ituri district.

133. Regarding the second counter-claim submitted by Uganda, having rejected the first, the Court found that the Democratic Republic of the Congo had for its part violated obligations owed to the Republic of Uganda under the Vienna Convention on Diplomatic Relations of 1961, through maltreatment of or failure to protect the persons and property protected by the said Convention.

134. The Court therefore found that the parties were under obligation to one another to make reparation for the injury caused; it decided that, failing agreement between the parties, the question of reparation would be settled by the Court. It reserved for this purpose the subsequent procedure in the case. Since then, the parties have transmitted to the Court certain information concerning the negotiations they are holding to settle the question of reparation, as referred to in points (6) and (14) of the operative clause of the judgment and paragraphs 260, 261 and 344 of the reasoning in the judgment. The case therefore remains pending.

4. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)*

135. On 2 July 1999, Croatia instituted proceedings before the Court against Serbia (then known as the Federal Republic of Yugoslavia) with respect to a dispute concerning alleged violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide committed between 1991 and 1995.

136. In its application, Croatia contends, inter alia, that, "[b]y directly controlling the activity of its armed forces, intelligence agents, and various paramilitary detachments, on the territory of ... Croatia, in the Knin region, eastern and western Slavonia, and Dalmatia", Serbia is liable for "ethnic cleansing" committed against Croatian citizens, "a form of genocide which resulted in large numbers of Croatian citizens being displaced, killed, tortured, or illegally detained, as well as extensive property destruction".

137. Accordingly, Croatia requests the Court to adjudge and declare that Serbia has "breached its legal obligations" to Croatia under the Genocide Convention and that it has "an obligation to pay to ... Croatia, in its own right and as *parens patriae* for its citizens, reparations for damages to persons and property, as well as to the Croatian economy and environment ... in a sum to be determined by the Court" (see annual report 1998-1999 et seq.).

138. As basis for the Court's jurisdiction, Croatia invokes article IX of the Genocide Convention, to which, it claims, both States are parties.

139. By an order of 14 September 1999, the Court fixed 14 March 2000 and 14 September 2000 as the respective time limits for the filing of a memorial by Croatia and a counter-memorial by Serbia. These time limits were twice extended, by orders of 10 March 2000 and 27 June 2000. Croatia filed its memorial within the time limit as extended by the latter order.

140. On 11 September 2002, within the time limit for the filing of its counter-memorial as extended by the order of 27 June 2000, Serbia raised certain preliminary objections in respect of jurisdiction and admissibility. Pursuant to article 79 of the Rules of Court, the proceedings on the merits were suspended. Croatia filed a

written statement of its observations and submissions on Serbia's preliminary objections on 25 April 2003, within the time limit fixed by the Court.

141. Public hearings on the preliminary objections in respect of jurisdiction and admissibility were held from 26 to 30 May 2008 (see annual report 2007-2008 et seq.).

142. On 18 November 2008, the Court rendered its judgment on the preliminary objections (see annual report 2008-2009 et seq.). In its judgment the Court found, inter alia, that, subject to its statement concerning the second preliminary objection raised by the respondent, it had jurisdiction, on the basis of article IX of the Genocide Convention, to entertain Croatia's application. The Court added that Serbia's second preliminary objection did not, in the circumstances of the case, possess an exclusively preliminary character. It then rejected the third preliminary objection raised by Serbia.

143. By an order of 20 January 2009, the President of the Court fixed 22 March 2010 as the time limit for the filing of the counter-memorial of Serbia. That pleading, containing counter-claims, was filed within the time limit thus prescribed. By an order of 4 February 2010, the Court directed the submission of a reply by Croatia and a rejoinder by Serbia concerning the claims presented by the parties. It fixed 20 December 2010 and 4 November 2011, respectively, as the time limits for the filing of those written pleadings. Those pleadings were filed within the time limits thus fixed.

144. By an order of 23 January 2012, the Court authorized the submission by Croatia of an additional written pleading relating solely to the counter-claims submitted by Serbia. It fixed 30 August 2012 as the time limit for the filing of that written pleading.

5. *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*

145. On 6 December 2001, Nicaragua filed an application instituting proceedings against Colombia in respect of a dispute concerning "a group of related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation" in the western Caribbean.

146. In its application, Nicaragua requests the Court to adjudge and declare:

> "First, that ... Nicaragua has sovereignty over the islands of Providencia, San Andrés and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueño keys (insofar as they are capable of appropriation);
>
> "Second, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary."

147. Nicaragua further indicates that it "reserves the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andrés and Providencia as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title". It adds that it "reserves the right to

claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua" (see annual report 2001-2002 et seq.).

148. As basis for the Court's jurisdiction, Nicaragua invokes article XXXI of the Pact of Bogotá, to which both Nicaragua and Colombia are parties, as well as the declarations of the two States recognizing the compulsory jurisdiction of the Court.

149. By an order of 26 February 2002, the Court fixed 28 April 2003 and 28 June 2004 as the respective time limits for the filing of a memorial by Nicaragua and a counter-memorial by Colombia. The memorial of Nicaragua was filed within the time limit thus fixed.

150. Copies of the pleadings and annexed documents produced in the case were requested by the Governments of Chile, Costa Rica, Ecuador, Honduras, Jamaica, Peru and Venezuela (Bolivarian Republic of) by virtue of article 53, paragraph 1, of the Rules of Court. Pursuant to that same provision, the Court, after ascertaining the views of the parties, acceded to those requests.

151. On 21 July 2003, within the time limit set by article 79, paragraph 1, of the Rules of Court, Colombia raised preliminary objections to the jurisdiction of the Court.

152. Public hearings on the preliminary objections were held from 4 to 8 June 2007 (see annual report 2006-2007 et seq.).

153. On 13 December 2007, the Court rendered a judgment, in which it found that Nicaragua's application was admissible insofar as it concerned sovereignty over the maritime features claimed by the parties other than the islands of San Andrés, Providencia and Santa Catalina, and in respect of the maritime delimitation between the parties (see annual report 2007-2008 et seq.).

154. By an order of 11 February 2008, the President of the Court fixed 11 November 2008 as the time limit for the filing of a counter-memorial by Colombia. The counter-memorial was filed within the time limit thus fixed.

155. By an order of 18 December 2008, the Court directed Nicaragua to submit a reply and Colombia a rejoinder, and fixed 18 September 2009 and 18 June 2010 as the respective time limits for the filing of those pleadings, which were filed within the time limits thus fixed.

156. On 25 February 2010, Costa Rica filed an application for permission to intervene in the case (Art. 62 of the Statute). In its application, Costa Rica stated, among other things, that "[b]oth Nicaragua and Colombia, in their boundary claims against each other, claim maritime area to which Costa Rica is entitled". It made clear that it was seeking to intervene in the proceedings as a non-party State. Costa Rica's application was immediately communicated to Nicaragua and Colombia, and the Court fixed 26 May 2010 as the time limit for the filing of written observations by those States. Those written observations were filed within the time limit thus fixed.

157. On 10 June 2010, Honduras also filed an application for permission to intervene in the case (Article 62 of the Statute). It asserted in its application that Nicaragua, in its dispute with Colombia, was putting forward maritime claims that lay in an area of the Caribbean Sea in which Honduras had rights and interests. Honduras stated that it was seeking primarily to intervene in the proceedings as a

party. Honduras's application was immediately communicated to Nicaragua and Colombia. The President of the Court fixed 2 September 2010 as the time limit for the filing of written observations by those States. Those written observations were filed within the time limit thus fixed.

158. Public hearings on the admission of Costa Rica's application for permission to intervene were held from 11 to 15 October 2010.

159. In its judgment of 4 May 2011, the Court, by nine votes to seven, found that the Application for permission to intervene in the proceedings filed by Costa Rica could not be granted.

160. Public hearings on the admission of Honduras's application for permission to intervene took place from 18 to 22 October 2010.

161. In its judgment of 4 May 2011, the Court, by 13 votes to 2, found that the application for permission to intervene in the proceedings filed by Honduras could not be granted.

162. Public hearings on the merits of the case were held from 23 April to 4 May 2012. At the conclusion of their oral arguments, the parties presented the following final submissions to the Court:

For the Republic of Nicaragua,

"In accordance with Article 60 of the Rules of Court and having regard to the pleadings, written and oral, the Republic of Nicaragua,

"I. May it please the Court to adjudge and declare that:

(1) The Republic of Nicaragua has sovereignty over all maritime features off her Caribbean coast not proven to be part of the 'San Andrés Archipelago' and in particular the following cays: the Cayos de Albuquerque; the Cayos del Este Sudeste; the Cay of Roncador; North Cay, Southwest Cay and any other cays on the bank of Serrana; East Cay, Beacon Cay and any other cays on the bank of Serranilla; and Low Cay and any other cays on the bank of Bajo Nuevo.

(2) If the Court were to find that there are features on the bank of Quitasueño that qualify as islands under international law, the Court is requested to find that sovereignty over such features rests with Nicaragua.

(3) The appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties.

(4) The islands of San Andrés and Providencia and Santa Catalina be enclaved and accorded a maritime entitlement of 12 nautical miles, this being the appropriate equitable solution justified by the geographical and legal framework.

(5) The equitable solution for any cay, that might be found to be Colombian, is to delimit a maritime boundary by drawing a 3-nautical-mile enclave around them.

"II. Further, the Court is requested to adjudge and declare that:

"Colombia is not acting in accordance with her obligations under international law by stopping and otherwise hindering Nicaragua from accessing and disposing of her natural resources to the east of the 82nd meridian."

For the Republic of Colombia,

"In accordance with Article 60 of the Rules of Court, for the reasons set out in Colombia's written and oral pleadings, taking into account the Judgment on Preliminary Objections and rejecting any contrary submissions of Nicaragua, Colombia requests the Court to adjudge and declare:

(*a*) That Nicaragua's new continental shelf claim is inadmissible and that, consequently, Nicaragua's Submission I (3) is rejected.

(*b*) That Colombia has sovereignty over all the maritime features in dispute between the Parties: Albuquerque, East-Southeast, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo, and all their appurtenant features, which form part of the Archipelago of San Andrés.

(*c*) That the delimitation of the exclusive economic zone and the continental shelf between Nicaragua and Colombia is to be effected by a single maritime boundary, being the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the Parties is measured ...

(*d*) That Nicaragua's written Submission II is rejected."

163. The Court has begun its deliberation and will deliver its judgment at a public sitting, the date of which will be announced in due course.

6. *Maritime Dispute (Peru* v. *Chile)*

164. On 16 January 2008, Peru filed an application instituting proceedings against Chile concerning a dispute in relation to "the delimitation of the boundary between the maritime zones of the two States in the Pacific Ocean, beginning at a point on the coast called Concordia, ... the terminal point of the land boundary established pursuant to the Treaty ... of 3 June 1929",[3] and also to the recognition in favour of Peru of a "maritime zone lying within 200 nautical miles of Peru's coast, and thus appertaining to Peru, but which Chile considers to be part of the high seas" (see annual report 2007-2008 et seq.).

165. Peru "requests the Court to determine the course of the boundary between the maritime zones of the two States in accordance with international law ... and to adjudge and declare that Peru possesses exclusive sovereign rights in the maritime area situated within the limit of 200 nautical miles from its coast but outside Chile's exclusive economic zone or continental shelf".

166. As basis for the Court's jurisdiction, Peru invokes article XXXI of the Pact of Bogotá of 30 April 1948, to which both States are parties without reservation.

167. By an order of 31 March 2008, the Court fixed 20 March 2009 and 9 March 2010 as the respective time limits for the filing of a memorial by Peru and a counter-

[3] Treaty between Chile and Peru for the settlement of the dispute regarding Tacna and Arica, signed at Lima on 3 June 1929.

memorial by Chile. Those pleadings were filed within the time limits thus prescribed.

168. Bolivia (Plurinational State of), Colombia and Ecuador, relying on article 53, paragraph 1, of the Rules of Court, requested copies of the pleadings and annexed documents produced in the case. In accordance with that provision, the Court, after ascertaining the views of the parties, acceded to those requests.

169. By an order of 27 April 2010, the Court authorized the submission of a reply by Peru and a rejoinder by Chile. It fixed 9 November 2010 and 11 July 2011 as the respective time limits for the filing of those pleadings. The reply and rejoinder were filed within the time limits thus fixed.

170. Pursuant to article 54, paragraph 1, of the Rules of Court, the Court fixed Monday 3 December 2012 as the date for the opening of the oral proceedings in the case.

7. *Aerial Herbicide Spraying (Ecuador* v. *Colombia)*

171. On 31 March 2008, Ecuador filed an application instituting proceedings against Colombia in respect of a dispute concerning the alleged "aerial spraying [by Colombia] of toxic herbicides at locations near, at and across its border with Ecuador".

172. Ecuador maintains that "the spraying has already caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time". It further contends that it has made "repeated and sustained efforts to negotiate an end to the fumigations", adding that "these negotiations have proved unsuccessful" (see annual report 2007-2008 et seq.).

173. Ecuador accordingly requests the Court:

"to adjudge and declare that:

(*a*) Colombia has violated its obligations under international law by causing or allowing the deposit on the territory of Ecuador of toxic herbicides that have caused damage to human health, property and the environment;

(*b*) Colombia shall indemnify Ecuador for any loss or damage caused by its internationally unlawful acts, namely the use of herbicides, including by aerial dispersion, and in particular:

(i) death or injury to the health of any person or persons arising from the use of such herbicides; and

(ii) any loss of or damage to the property or livelihood or human rights of such persons; and

(iii) environmental damage or the depletion of natural resources; and

(iv) the costs of monitoring to identify and assess future risks to public health, human rights and the environment resulting from Colombia's use of herbicides; and

(v) any other loss or damage; and

(*c*) Colombia shall:

(i) respect the sovereignty and territorial integrity of Ecuador; and

(ii) forthwith, take all steps necessary to prevent, on any part of its territory, the use of any toxic herbicides in such a way that they could be deposited onto the territory of Ecuador; and

(iii) prohibit the use, by means of aerial dispersion, of such herbicides in Ecuador, or on or near any part of its border with Ecuador."

174. As the basis for the Court's jurisdiction, Ecuador invokes article XXXI of the Pact of Bogotá of 30 April 1948, to which both States are parties. Ecuador also relies on article 32 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

175. In its application, Ecuador reaffirms its opposition to "the export and consumption of illegal narcotics", but stresses that the issues presented to the Court "relate exclusively to the methods and locations of Colombia's operations to eradicate illicit coca and poppy plantations — and the harmful effects in Ecuador of such operations".

176. By an order of 30 May 2008, the Court fixed 29 April 2009 and 29 March 2010 as the respective time limits for the filing of a memorial by Ecuador and a counter-memorial by Colombia. Those pleadings were filed within the time limits thus prescribed.

177. By an order of 25 June 2010, the Court directed the submission of a reply by Ecuador and a rejoinder by Colombia. It fixed 31 January 2011 and 1 December 2011, respectively, as the time limits for the filing of those pleadings. The reply of Ecuador was filed within the time limit thus fixed.

178. By an order of 19 October 2011, the President of the Court extended from 1 December 2011 to 1 February 2012 the time limit for the filing of a rejoinder by Colombia. That pleading was filed within the time limit thus extended.

8. *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*

179. On 17 November 2008, the former Yugoslav Republic of Macedonia instituted proceedings against Greece for what it described as "a flagrant violation of [Greece's] obligations under Article 11" of the Interim Accord signed by the Parties on 13 September 1995.

180. In its application, the former Yugoslav Republic of Macedonia requested the Court "to protect its rights under the Interim Accord and to ensure that it is allowed to exercise its rights as an independent State acting in accordance with international law, including the right to pursue membership of relevant international organisations".

181. It requested the Court to order Greece to "immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1" and "to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant's membership of the North Atlantic Treaty Organization and/or of any other 'international, multilateral and regional organizations and institutions' of which [Greece] is a member ..." (see annual report 2008-2009 et seq.).

182. The applicant invoked as a basis for the jurisdiction of the Court article 21, paragraph 2, of the Interim Accord of 13 September 1995, which provides that "[a]ny difference or dispute that arises between the Parties concerning the interpretation or implementation of this Interim Accord may be submitted by either of them to the International Court of Justice, except for the differences referred to in Article 5, paragraph 1".

183. By an order of 20 January 2009, the Court fixed 20 July 2009 as the time limit for the filing of a memorial by the former Yugoslav Republic of Macedonia and 20 January 2010 as the time limit for the filing of a counter-memorial by Greece. Those pleadings were filed within the time limits thus prescribed.

184. By an order of 12 March 2010, the Court authorized the submission of a reply by the former Yugoslav Republic of Macedonia and a rejoinder by Greece. It fixed 9 June 2010 and 27 October 2010 as the respective time limits for the filing of those pleadings. The reply of the former Yugoslav Republic of Macedonia and the rejoinder of Greece were filed within the time limits thus fixed.

185. Public hearings were held from 21 to 30 March 2011. At the end of those hearings, the parties presented their final submissions to the Court.

186. The former Yugoslav Republic of Macedonia requested the Court:

> "(a) to reject the Respondent's objections as to the jurisdiction of the Court and the admissibility of the Applicant's claims;
>
> (b) to adjudge and declare that the Respondent, through its State organs and Agents, has violated its obligations under Article 11, paragraph 1, of the Interim Accord; and
>
> (c) to order that the Respondent immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1, of the Interim Accord, and to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant's membership of the North Atlantic Treaty Organization and/or of any other 'international, multilateral and regional organizations and institutions' of which the Respondent is a member, in circumstances where the Applicant is to be referred to in such organization or institution by the designation provided for in paragraph 2 of United Nations Security Council resolution 817 (1993)."

187. Greece requested the Court "to adjudge and declare:

> (a) that the case brought by the Applicant before the Court does not fall within the jurisdiction of the Court and that the Applicant's claims are inadmissible;
>
> (b) in the event that the Court finds that it has jurisdiction and that the claims are admissible, that the Applicant's claims are unfounded."

188. In its judgment of 5 December 2011, the Court,

> "(1) [b]y fourteen votes to two,
>
> [*found*] that it ha[d] jurisdiction to entertain the Application filed by the former Yugoslav Republic of Macedonia on 17 November 2008 and that this Application [was] admissible;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Donoghue; *Judge* ad hoc Vukas;

AGAINST: *Judge* Xue; *Judge* ad hoc Roucounas;

(2) [b]y fifteen votes to one,

[*found*] that the Hellenic Republic, by objecting to the admission of the former Yugoslav Republic of Macedonia to NATO, ha[d] breached its obligation under Article 11, paragraph 1, of the Interim Accord of 13 September 1995;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Vukas;

AGAINST: *Judge* ad hoc Roucounas;

(3) [b]y fifteen votes to one,

[*r*]*eject*[*ed*] all other submissions made by the forme. Yugoslav Republic of Macedonia.

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Roucounas;

AGAINST: *Judge* ad hoc Vukas."

9. *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*

189. On 23 December 2008, Germany instituted proceedings against Italy, alleging that "[t]hrough its judicial practice ... Italy has infringed and continues to infringe its obligations towards Germany under international law".

190. In its application, Germany contended that "[i]n recent years, Italian judicial bodies have repeatedly disregarded the jurisdictional immunity of Germany as a sovereign State [, that the] critical stage of that development was reached by the judgment of the Corte di Cassazione of 11 March 2004 in the *Ferrini* case, where [that court] declared that Italy held jurisdiction with regard to a claim ... brought by a person who during World War II had been deported to Germany to perform forced labour in the armaments industry [, and that, after] this judgment had been rendered, numerous other proceedings were instituted against Germany before Italian courts by persons who had also suffered injury as a consequence of the armed conflict."

191. The applicant stated that enforcement measures had already been taken against German assets in Italy: a "judicial mortgage" on Villa Vigoni, the German-Italian centre of cultural exchange, had been recorded in the land register. In addition to the claims brought against it by Italian nationals, Germany also cited "attempts by Greek nationals to enforce in Italy a judgment obtained in Greece on account of a ... massacre committed by German military units during their withdrawal in 1944".

192. Germany concluded its application by requesting the Court to adjudge and declare that Italy:

"(1) by allowing civil claims based on violations of international humanitarian law by the German Reich during World War II from September

1943 to May 1945 to be brought against the Federal Republic of Germany, committed violations of obligations under international law in that it has failed to respect the jurisdictional immunity which the Federal Republic of Germany enjoys under international law;

"(2) by taking measures of constraint against 'Villa Vigoni', German State property used for government non-commercial purposes, also committed violations of Germany's jurisdictional immunity;

"(3) by declaring Greek judgments based on occurrences similar to those defined above in request No. 1 enforceable in Italy, committed a further breach of Germany's jurisdictional immunity."

Accordingly, the Federal Republic of Germany requested the Court to adjudge and declare that:

"(4) the Italian Republic's international responsibility is engaged;

"(5) the Italian Republic must, by means of its own choosing, take any and all steps to ensure that all the decisions of its courts and other judicial authorities infringing Germany's sovereign immunity become unenforceable;

"(6) the Italian Republic must take any and all steps to ensure that in the future Italian courts do not entertain legal actions against Germany founded on the occurrences described in request No. 1 above."

193. As the basis for the jurisdiction of the Court, Germany invoked, in its application, article 1 of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, ratified by Italy on 29 January 1960 and by Germany on 18 April 1961 (see annual report 2008-2009 et seq.).

194. By an order of 29 April 2009, the Court fixed 23 June 2009 as the time limit for the filing of a memorial by Germany and 23 December 2009 as the time limit for the filing of a counter-memorial by Italy. Those pleadings were filed within the time limits thus prescribed.

195. In chapter VII of the counter-memorial filed by Italy, the respondent, referring to article 80 of the Rules of Court, made a counter-claim "with respect to the question of the reparation owed to Italian victims of grave violations of international humanitarian law committed by forces of the German Reich" (see annual report 2009-2010 et seq.).

196. By an order of 6 July 2010, the Court, by 13 votes to 1, found "that the counter-claim presented by Italy ... is inadmissible as such and does not form part of the current proceedings" (see annual report 2009-2010 et seq.). The Court then unanimously authorized the submission of a reply by Germany and a rejoinder by Italy and fixed 14 October 2010 and 14 January 2011 as the respective time limits for the filing of those pleadings. The reply of Germany and the rejoinder of Italy were filed within the time limits thus fixed.

197. On 12 January 2011, Greece filed an application for permission to intervene in the case (Art. 62 of the Statute). In that application, Greece stated, inter alia, that it did not seek "to become a party to the case". By an order of 4 July 2011, the Court authorized Greece to intervene in the case as a non-party, "insofar as this intervention [was] limited to the decisions of Greek courts [in the *Distomo* case]" (see annual report 2010-2011).

198. Public hearings were held from Monday 12 to Friday 16 September 2011, at the end of which the parties presented the following final submissions to the Court:

For the Federal Republic of Germany:

"Germany respectfully requests the Court to adjudge and declare that the Italian Republic:

"(1) by allowing civil claims based on violations of international humanitarian law by the German Reich during World War II between September 1943 and May 1945 to be brought against the Federal Republic of Germany, committed violations of obligations under international law in that it has failed to respect the jurisdictional immunity which the Federal Republic of Germany enjoys under international law;

"(2) by taking measures of constraint against 'Villa Vigoni', German State property used for government non-commercial purposes, also committed violations of Germany's jurisdictional immunity;

"(3) by declaring Greek judgments based on occurrences similar to those defined above in request No. 1 enforceable in Italy, committed a further breach of Germany's jurisdictional immunity.

Accordingly, the Federal Republic of Germany respectfully requests the Court to adjudge and declare that:

"(4) the Italian Republic's international responsibility is engaged;

"(5) the Italian Republic must, by means of its own choosing, take any and all steps to ensure that all the decisions of its courts and other judicial authorities infringing Germany's sovereign immunity become unenforceable; and

"(6) the Italian Republic must take any and all steps to ensure that in the future Italian courts do not entertain legal actions against Germany founded on the occurrences described in request No. 1 above."

For the Italian Republic:

"[F]or the reasons given in [its] written and oral pleadings, [Italy requests] that the Court adjudge and hold the claims of the Applicant to be unfounded. This request is subject to the qualification that ... Italy has no objection to any decision by the Court obliging Italy to ensure that the mortgage on Villa Vigoni inscribed at the land registry is cancelled."

199. Greece presented its oral observations to the Court on Wednesday, 14 September 2011.

200. In its judgment of 3 February 2012, the Court,

"(1) [b]y twelve votes to three,

[found] that the Italian Republic ha[d] violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the German Reich between 1943 and 1945;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Greenwood, Xue, Donoghue;

AGAINST: *Judges* Cançado Trindade, Yusuf; *Judge* ad hoc Gaja;

(2) [b]y fourteen votes to one,

[found] that the Italian Republic ha[d] violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by taking measures of constraint against Villa Vigoni;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Gaja;

AGAINST: *Judge* Cançado Trindade;

(3) [b]y fourteen votes to one,

[found] that the Italian Republic ha[d] violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by declaring enforceable in Italy decisions of Greek courts based on violations of international humanitarian law committed in Greece by the German Reich;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Gaja;

AGAINST: *Judge* Cançado Trindade;

(4) [b]y fourteen votes to one,

[found] that the Italian Republic must, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions of its courts and those of other judicial authorities infringing the immunity which the Federal Republic of Germany enjoys under international law cease to have effect;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Gaja;

AGAINST: *Judge* Cançado Trindade;

(5) [u]nanimously,

[r]eject[ed] all other submissions made by the Federal Republic of Germany."

10. Questions relating to the Obligation to Prosecute or Extradite (Belgium v. *Senegal)*

201. On 19 February 2009, Belgium instituted proceedings against Senegal, on the grounds that a dispute exists "between the Kingdom of Belgium and the Republic of Senegal regarding Senegal's compliance with its obligation to prosecute" the former President of Chad, Hissène Habré, "or to extradite him to Belgium for the purposes of criminal proceedings". Belgium also submitted a request for the indication of provisional measures, in order to protect its rights pending the Court's judgment on the merits.

202. In its application, Belgium maintained that Senegal, where Mr. Habré has been living in exile since 1990, had taken no action on its repeated requests to see the former President of Chad prosecuted in Senegal, failing his extradition to Belgium, for acts characterized as including crimes of torture and crimes against humanity (see annual report 2008-2009 et seq.).

203. To found the Court's jurisdiction, Belgium, in its application, invoked the unilateral declarations recognizing the compulsory jurisdiction of the Court made by the parties pursuant to Article 36, paragraph 2, of the Statute of the Court, on 17 June 1958 (Belgium) and 2 December 1985 (Senegal), respectively.

204. Moreover, the applicant indicated that "[t]he two States [are] parties to the United Nations Convention against Torture of 10 December 1984". The Convention was ratified by Senegal on 21 August 1986, without reservation, and has been binding on the latter since 26 June 1987, when it entered into force. It was ratified by Belgium on 25 June 1999, without reservation, and has been binding on the latter since 25 July 1999. Article 30 of that Convention provides that any dispute between two States parties concerning the interpretation or application of the Convention which it has not been possible to settle through negotiation or arbitration may be submitted to the International Court of Justice by one of those States. Belgium contended that negotiations between the two States "have continued unsuccessfully since 2005" and that it reached the conclusion on 20 June 2006 that they had failed. It stated, moreover, that it had suggested recourse to arbitration to Senegal on 20 June 2006 but claimed that the latter "failed to respond to that request ... whereas Belgium has persistently confirmed in Notes Verbales that a dispute on this subject continues to exist".

205. At the end of its application, Belgium requested the Court to adjudge and declare that:

> "– the Court has jurisdiction to entertain the dispute between ... Belgium and ... Senegal regarding Senegal's compliance with its obligation to prosecute Mr. H. Habré or to extradite him to Belgium for the purposes of criminal proceedings;
>
> – Belgium's claim is admissible;
>
> – the Republic of Senegal is obliged to bring criminal proceedings against Mr. H. Habré for acts including crimes of torture and crimes against humanity which are alleged against him as perpetrator, co-perpetrator or accomplice;
>
> – failing the prosecution of Mr. H. Habré, the Republic of Senegal is obliged to extradite him to the Kingdom of Belgium so that he can answer for these crimes before the Belgian courts".

206. Belgium's application was accompanied by a request for the indication of provisional measures. Belgium explained therein that while "Mr. H. Habré is [at present] under house arrest in Dakar ... it transpires from an interview which the President of Senegal, A. Wade, gave to Radio France International that Senegal could lift his house arrest if it fails to find the budget which it regards as necessary in order to hold the trial of Mr. H. Habré". The applicant stated that, "in such an event, it would be easy for Mr. H. Habré to leave Senegal and avoid any prosecution", which "would cause irreparable prejudice to the rights conferred on Belgium by international law ... and also violate the obligations which Senegal must fulfil".

207. Public hearings were held from 6 to 8 April 2009 to hear the oral observations of the parties on the request for the indication of provisional measures submitted by Belgium.

208. At the close of those hearings, Belgium asked the Court to indicate the following provisional measures: "the Republic of Senegal is requested to take all the steps within its power to keep Mr. Hissène Habré under the control and surveillance of the Senegalese authorities so that the rules of international law with which Belgium requests compliance may be correctly applied". For its part, Senegal asked the Court "to reject the provisional measures requested by Belgium".

209. In its order made on 28 May 2009, the Court found, by 13 votes to 1, that "the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power ... to indicate provisional measures".

210. By an order of 9 July 2009, the Court fixed 9 July 2010 as the time limit for the filing of a memorial by Belgium and 11 July 2011 as the time limit for the filing of a counter-memorial by Senegal. The memorial of Belgium was filed within the time limit thus fixed.

211. By order of 11 July 2011, the President of the Court extended the time limit for the filing of the counter-memorial of Senegal from 11 July 2011 to 29 August 2011. The counter-memorial was filed within the time limit thus extended.

212. Public hearings on the merits of the case were held from Monday 12 to Wednesday, 21 March 2012. At the conclusion of their oral arguments, the parties presented the following final submissions to the Court.

Belgium requested the Court to adjudge and declare that:

> "1. (*a*) Senegal breached its international obligations by failing to incorporate in due time in its domestic law the provisions necessary to enable the Senegalese judicial authorities to exercise the universal jurisdiction provided for in Article 5, paragraph 2, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
>
> (*b*) Senegal has breached and continues to breach its international obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and under other rules of international law by failing to bring criminal proceedings against Hissène Habré for acts characterized in particular as crimes of torture, war crimes, crimes against humanity and the crime of genocide alleged against him as

perpetrator, co-perpetrator or accomplice, or, otherwise, to extradite him to Belgium for the purposes of such criminal proceedings;

(*c*) Senegal may not invoke financial or other difficulties to justify the breaches of its international obligations.

"2. Senegal is required to cease these internationally wrongful acts

(*a*) by submitting without delay the Hissène Habré case to its competent authorities for prosecution; or

(*b*) failing that, by extraditing Hissène Habré to Belgium without further ado."

Senegal requested the Court to adjudge and declare that:

"1. Principally, it cannot adjudicate on the merits of the Application filed by the Kingdom of Belgium because it lacks jurisdiction as a result of the absence of a dispute between Belgium and Senegal, and the inadmissibility of that Application;

"2. In the alternative, should it find that it has jurisdiction and that Belgium's Application is admissible, that Senegal has not breached any of the provisions of the 1984 Convention against Torture, in particular those prescribing the obligation to 'try or extradite' (Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention), or, more generally, any other rule of conventional law, general international law or customary international law in this area;

"3. In taking the various measures that have been described, Senegal is fulfilling its commitments as a State Party to the 1984 Convention against Torture;

"4. In taking the appropriate measures and steps to prepare for the trial of Mr. H. Habré, Senegal is complying with the declaration by which it made a commitment before the Court;

"5. It consequently rejects all the requests set forth in the Application of the Kingdom of Belgium."

213. In its judgment handed down on 20 July 2012, the Court,

"(1) [u]nanimously,

[found] that it ha[d] jurisdiction to entertain the dispute between the Parties concerning the interpretation and application of Article 6, paragraph 2, and Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, which the Kingdom of Belgium submitted to the Court in its Application filed in the Registry on 19 February 2009;

(2) [b]y fourteen votes to two,

[found] that it ha[d] no jurisdiction to entertain the claims of the Kingdom of Belgium relating to alleged breaches, by the Republic of Senegal, of obligations under customary international law;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Kirsch;

AGAINST: *Judge* Abraham; *Judge* ad hoc Sur;

(3) [b]y fourteen votes to two,

[found] that the claims of the Kingdom of Belgium based on Article 6, paragraph 2, and Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 [were] admissible;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Kirsch;

AGAINST: *Judge* Xue; *Judge* ad hoc Sur;

(4) [b]y fourteen votes to two,

[found] that the Republic of Senegal, by failing to make immediately a preliminary inquiry into the facts relating to the crimes allegedly committed by Mr. Hissène Habré, ha[d] breached its obligation under Article 6, paragraph 2, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Greenwood, Donoghue, Gaja, Sebutinde; *Judges* ad hoc Sur, Kirsch;

AGAINST: *Judges* Yusuf, Xue;

(5) [b]y fourteen votes to two,

[found] that the Republic of Senegal, by failing to submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution, ha[d] breached its obligation under Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Kirsch;

AGAINST: *Judge* Xue; *Judge* ad hoc Sur;

(6) [u]nanimously,

[found] that the Republic of Senegal must, without further delay, submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution, if it d[id] not extradite him."

Judge Owada appended a declaration to the judgment of the Court; Judges Abraham, Skotnikov, Cançado Trindade and Yusuf appended separate opinions to the judgment of the Court; Judge Xue appended a dissenting opinion to the judgment of the Court; Judge Donoghue appended a declaration to the judgment of the Court; Judge

Sebutinde appended a separate opinion to the judgment of the Court; Judge ad hoc Sur appended a dissenting opinion to the judgment of the Court.

11. Whaling in the Antarctic (Australia v. *Japan)*

214. On 31 May 2010, Australia instituted proceedings against Japan, alleging that "Japan's continued pursuit of a large-scale program of whaling under the Second Phase of its Japanese Whale Research Program under Special Permit in the Antarctic ('JARPA II') [was] in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling ('ICRW'), as well as its other international obligations for the preservation of marine mammals and the marine environment" (see annual report 2009-2010 et seq.).

215. At the end of its application, Australia requests the Court to adjudge and declare that "Japan is in breach of its international obligations in implementing the JARPA II program in the Southern Ocean", and to order that Japan: "(a) cease implementation of JARPA II; (b) revoke any authorisations, permits or licences allowing the activities which are the subject of this application to be undertaken; and (c) provide assurances and guarantees that it will not take any further action under the JARPA II or any similar program until such program has been brought into conformity with its obligations under international law."

216. As the basis for the jurisdiction of the Court, the applicant invokes the provisions of Article 36, paragraph 2, of the Court's Statute, referring to the declarations recognizing the Court's jurisdiction as compulsory made by Australia on 22 March 2002 and by Japan on 9 July 2007.

217. By an order of 13 July 2010, the Court fixed 9 May 2011 as the time limit for the filing of a memorial by Australia and 9 March 2012 as the time limit for the filing of a counter-memorial by Japan. Those pleadings were filed within the time limits thus prescribed.

218. The Court subsequently decided that the filing of a reply by Australia and a rejoinder by Japan was not necessary and that the written phase of the proceedings was therefore closed. The subsequent procedure was reserved for further decision.

12. Frontier Dispute (Burkina Faso/Niger)

219. On 20 July 2010, Burkina Faso and Niger jointly submitted a frontier dispute between them to the Court. By a joint letter dated 12 May 2010 and filed in the Registry on 20 July 2010, the two States notified to the Court a special agreement signed in Niamey on 24 February 2009, which entered into force on 20 November 2009. Under the terms of article 1 of this special agreement, the parties have agreed to submit their frontier dispute to the Court, and that each of them will choose a judge ad hoc.

Article 2 of the special agreement indicates the subject of the dispute as follows:

> "The Court is requested to:
>
> "1. determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong (latitude 14° 25' 04" N; longitude 00° 12' 47" E) to the beginning of the Botou bend (latitude 12° 36' 18" N; longitude 01° 52' 07" E);

"2. place on record the Parties' agreement on the results of the work of the Joint Technical Commission on demarcation of the Burkina Faso-Niger boundary with regard to the following sectors:

(*a*) the sector from the heights of N'Gouma to the astronomic marker of Tong-Tong;

(*b*) the sector from the beginning of the Botou bend to the River Mekrou."

In article 3, paragraph 1, the parties request the Court to authorize the following written proceedings:

"(*a*) a Memorial filed by each Party not later than nine (9) months after the seising of the Court;

(*b*) a Counter-Memorial filed by each Party not later than nine (9) months after exchange of the Memorials;

(*c*) any other pleading whose filing, at the request of either of the Parties, shall have been authorized or directed by the Court."

Article 7 of the special agreement, entitled "Judgment of the Court", reads as follows:

"1. The Parties accept the Judgment of the Court given pursuant to this Special Agreement as final and binding upon them.

"2. From the day on which the Judgment is rendered, the Parties shall have eighteen (18) months in which to commence the work of demarcating the boundary.

"3. In case of difficulty in the implementation of the Judgment, either Party may seise the Court pursuant to Article 60 of its Statute.

"4. The Parties request the Court to nominate, in its Judgment, three (3) experts to assist them as necessary in the demarcation."

Lastly, article 10 contains the following "special undertaking":

"Pending the Judgment of the Court, the Parties undertake to maintain peace, security and tranquillity among the populations of the two States in the frontier region, refraining from any act of incursion into the disputed areas and organizing regular meetings of administrative officials and the security services.

"With regard to the creation of socio-economic infrastructure, the Parties undertake to hold preliminary consultations prior to implementation."

The special agreement was accompanied by an exchange of notes dated 29 October and 2 November 2009 embodying the agreement between the two States on the delimited sectors of the frontier.

220. By order of 14 September 2010, the Court fixed 20 April 2011 and 20 January 2012 as the respective time limits for the filing of a memorial and a counter-memorial by each of the parties. Those pleadings were filed within the time limits thus fixed. The parties did not consider it necessary to submit additional pleadings and the case became ready for hearing.

221. Pursuant to article 54, paragraph 1, of the Rules of Court, the Court fixed Monday, 8 October 2012 as the date of the opening of the oral proceedings in the case.

13. *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*

222. On 18 November 2010, Costa Rica instituted proceedings against Nicaragua in respect of an alleged "incursion into, occupation of and use by Nicaragua's Army of Costa Rican territory as well as [alleged] breaches of Nicaragua's obligations towards Costa Rica" under a number of international treaties and conventions.

223. Costa Rica charges Nicaragua with having occupied, in two separate incidents, the territory of Costa Rica in connection with the construction of a canal across Costa Rican territory from the San Juan River to Laguna los Portillos (also known as "Harbor Head Lagoon"), and with having carried out certain related works of dredging on the San Juan River. Costa Rica states that the "ongoing and planned dredging and the construction of the canal will seriously affect the flow of water to the Colorado River of Costa Rica, and will cause further damage to Costa Rican territory, including the wetlands and national wildlife protected areas located in the region" (see annual report 2010-2011).

224. Costa Rica accordingly requests the Court "to adjudge and declare that Nicaragua is in breach of its international obligations ... as regards the incursion into and occupation of Costa Rican territory, the serious damage inflicted to its protected rainforests and wetlands, and the damage intended to the Colorado River, wetlands and protected ecosystems, as well as the dredging and canalization activities being carried out by Nicaragua on the San Juan River. In particular the Court is requested to adjudge and declare that, by its conduct, Nicaragua has breached:

(*a*) the territory of the Republic of Costa Rica, as agreed and delimited by the 1858 Treaty of Limits, the Cleveland Award and the first and second Alexander Awards;

(*b*) the fundamental principles of territorial integrity and the prohibition of use of force under the Charter of the United Nations and the Charter of the Organization of American States;

(*c*) the obligation imposed upon Nicaragua by Article IX of the 1858 Treaty of Limits not to use the San Juan River to carry out hostile acts;

(*d*) the obligation not to damage Costa Rican territory;

(*e*) the obligation not to artificially channel the San Juan River away from its natural watercourse without the consent of Costa Rica;

(*f*) the obligation not to prohibit the navigation on the San Juan River by Costa Rican nationals;

(*g*) the obligation not to dredge the San Juan River if this causes damage to Costa Rican territory (including the Colorado River), in accordance with the 1888 Cleveland Award;

(*h*) the obligations under the Ramsar Convention on Wetlands;

(*i*) the obligation not to aggravate and extend the dispute by adopting measures against Costa Rica, including the expansion of the invaded and occupied Costa Rican territory or by adopting any further measure or carrying out any further actions that would infringe Costa Rica's territorial integrity under international law."

225. The Court is also requested to determine the reparation which must be made by Nicaragua, in particular in relation to any measures of the kind referred to in the paragraph above.

226. As the basis for the jurisdiction of the Court, the applicant invokes Article 36, paragraph 1, of the Statute of the Court by virtue of the operation of article XXXI of the American Treaty on Pacific Settlement of 30 April 1948 ("Pact of Bogotá"), as well as the declarations of acceptance of the compulsory jurisdiction of the Court made by Costa Rica on 20 February 1973 and by Nicaragua on 24 September 1929 (modified on 23 October 2001), pursuant to Article 36, paragraph 2, of the Statute of the Court.

227. On 18 November 2010, Costa Rica also filed a request for the indication of provisional measures, in which it "request[ed] the Court as a matter of urgency to order ... provisional measures so as to rectify the ... ongoing breach of Costa Rica's territorial integrity and to prevent further irreparable harm to Costa Rica's territory, pending its determination of this case on the merits" (see annual report 2010-2011).

228. Public hearings on the request for the indication of provisional measures submitted by Costa Rica were held from 11 to 13 January 2011 (see annual report 2010-2011).

229. On 8 March 2011, the Court delivered its decision on the request for the indication of provisional measures submitted by Costa Rica. In its order, it indicated the following provisional measures:

"(1) Unanimously,

Each Party shall refrain from sending to, or maintaining in the disputed territory, including the *caño* [the canal cut by Nicaragua], any personnel, whether civilian, police or security;

(2) By thirteen votes to four,

Notwithstanding point (1) above, Costa Rica may dispatch civilian personnel charged with the protection of the environment to the disputed territory, including the *caño*, but only insofar as it is necessary to avoid irreparable prejudice being caused to the part of the wetland where that territory is situated; Costa Rica shall consult with the Secretariat of the Ramsar Convention in regard to these actions, give Nicaragua prior notice of them and use its best endeavours to find common solutions with Nicaragua in this respect;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Cançado Trindade, Yusuf, Greenwood, Donoghue; *Judge* ad hoc Dugard;

AGAINST: *Judges* Sepúlveda-Amor, Skotnikov, Xue; *Judge* ad hoc Guillaume;

(3) Unanimously,

Each Party shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

(4) Unanimously,

Each Party shall inform the Court as to its compliance with the above provisional measures."

Judges Koroma and Sepúlveda-Amor appended separate opinions to the order; Judges Skotnikov, Greenwood and Xue appended declarations to the order; Judge ad hoc Guillaume appended a declaration to the order; Judge ad hoc Dugard appended a separate opinion to the order.

230. By an order of 5 April 2011, the Court, taking account of the views of the parties, fixed 5 December 2011 and 6 August 2012 respectively, as the time limits for the filing of a memorial by Costa Rica and a counter-memorial by Nicaragua. The memorial of Costa Rica was filed within the time limit thus fixed.

14. Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. *Thailand) (Cambodia* v. *Thailand)*

231. On 28 April 2011, Cambodia submitted, by an application filed in the Registry of the Court, a request for interpretation of the judgment rendered by the Court on 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)*.

232. In its application, Cambodia indicates the "points in dispute as to the meaning or scope of the Judgment", as stipulated by article 98 of the Rules of Court. It states in particular that: "(1) according to Cambodia, the Judgment [rendered by the Court in 1962] is based on the prior existence of an international boundary established and recognized by both States; (2) according to Cambodia, that boundary is defined by the map to which the Court refers on page 21 of its Judgment ..., a map which enables the Court to find that Cambodia's sovereignty over the Temple is a direct and automatic consequence of its sovereignty over the territory on which the Temple is situated ...; (3) according to [Cambodia], Thailand is under an obligation [pursuant to the Judgment] to withdraw any military or other personnel from the vicinity of the Temple on Cambodian territory ... [T]his is a general and continuing obligation deriving from the statements concerning Cambodia's territorial sovereignty recognized by the Court in that region." Cambodia asserts that "Thailand disagrees with all of these points."

233. The applicant seeks to base the jurisdiction of the Court on Article 60 of the Statute of the Court, which provides: "In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party". Cambodia also invokes article 98 of the Rules of Court.

234. It explains in its application that, while "Thailand does not dispute Cambodia's sovereignty over the Temple — and only over the Temple itself", it does, however, call into question the 1962 judgment in its entirety.

235. Cambodia contends that "in 1962, the Court placed the Temple under Cambodian sovereignty, because the territory on which it is situated is on the Cambodian side of the boundary", and that "[t]o refuse Cambodia's sovereignty

over the area beyond the Temple as far as its 'vicinity' is to say to the Court that the boundary line which it recognized [in 1962] is wholly erroneous, *including in respect of the Temple itself*".

236. Cambodia emphasizes that the purpose of its request is to seek an explanation from the Court regarding the "meaning and ... scope of its Judgment, within the limit laid down by Article 60 of the Statute". It adds that such an explanation, "which would be binding on Cambodia and Thailand, ... could then serve as a basis for a final resolution of this dispute through negotiation or any other peaceful means" (see annual report 2010-2011).

237. At the close of its application, Cambodia asks the Court to adjudge and declare that "[t]he obligation incumbent upon Thailand to 'withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory' (point 2 of the operative clause [of the Judgment rendered by the Court in 1962]) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the area of the Temple and its vicinity by the line on the map [referred to on page 21 of the Judgment], on which [the Judgment] is based."

238. On the same day, Cambodia also filed a request for the indication of provisional measures, whereby it "respectfully request[ed] the Court to indicate the following provisional measures, pending the delivery of its judgment:

- an immediate and unconditional withdrawal of all Thai forces from those parts of Cambodian territory situated in the area of the Temple of Preah Vihear;
- a ban on all military activity by Thailand in the area of the Temple of Preah Vihear;
- that Thailand refrain from any act or action which could interfere with the rights of Cambodia or aggravate the dispute in the principal proceedings." (See annual report 2010-2011.)

239. Public hearings on the request for the indication of provisional measures filed by Cambodia were held on Monday, 30 May, and on Tuesday, 31 May 2011.

240. At the close of the second round of oral observations, Cambodia reiterated its request for the indication of provisional measures; the agent of Thailand, for his part, presented the following submissions on behalf of his Government: "In accordance with Article 60 of the Rules of Court and having regard to the Request for the indication of provisional measures of the Kingdom of Cambodia and its oral pleadings, the Kingdom of Thailand respectfully requests the Court to remove the case introduced by the Kingdom of Cambodia on 28 April 2011 from the General List".

241. On 18 July 2011, the Court made its order on the request for the indication of provisional measures submitted by Cambodia, the operative part of which reads as follows:

> "For these reasons,
>
> The Court,
>
> (A) Unanimously,

Rejects the Kingdom of Thailand's request to remove the case introduced by the Kingdom of Cambodia on 28 April 2011 from the General List of the Court;

(B) *Indicates* the following provisional measures:

(1) By eleven votes to five,

Both Parties shall immediately withdraw their military personnel currently present in the provisional demilitarized zone, as defined in paragraph 62 of the present Order, and refrain from any military presence within that zone and from any armed activity directed at that zone;

IN FAVOUR: *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood; *Judge* ad hoc Guillaume;

AGAINST: *President* Owada; *Judges* Al-Khasawneh, Xue, Donoghue; *Judge* ad hoc Cot;

(2) By fifteen votes to one,

Thailand shall not obstruct Cambodia's free access to the Temple of Preah Vihear or Cambodia's provision of fresh supplies to its non-military personnel in the Temple;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(3) By fifteen votes to one,

Both Parties shall continue the cooperation which they have entered into within ASEAN and, in particular, allow the observers appointed by that organization to have access to the provisional demilitarized zone;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(4) By fifteen votes to one,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(C) By fifteen votes to one,

Decides that each Party shall inform the Court as to its compliance with the above provisional measures;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(D) By fifteen votes to one,

Decides that, until the Court has rendered its judgment on the request for interpretation, it shall remain seised of the matters which form the subject of this Order.

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue."

President Owada appended a dissenting opinion to the order of the Court; Judge Koroma appended a declaration to the order of the Court; Judge Al-Khasawneh appended a dissenting opinion to the order of the Court; Judge Cançado Trindade appended a separate opinion to the order of the Court; Judges Xue and Donoghue appended dissenting opinions to the order of the Court; Judge ad hoc Guillaume appended a declaration to the order of the Court; Judge ad hoc Cot appended a dissenting opinion to the order of the Court.

242. By letters dated 24 November 2011, the Registrar of the Court informed the parties that the Court had decided to afford them the opportunity of furnishing further written explanations, pursuant to article 98, paragraph 4, of the Rules of Court, and had fixed 8 March 2012 and 21 June 2012 as the respective time limits for the filing by Cambodia and Thailand of such explanations. The further written explanations were filed within the time limits thus fixed.

243. Under article 54, paragraph 1, of its Rules, the Court fixed Monday, 15 April 2013 as the date for the opening of the public hearings on the merits of the case.

15. *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica)*

244. On 22 December 2011, Nicaragua instituted proceedings against Costa Rica with regard to "violations of Nicaraguan sovereignty and major environmental damages to its territory". Nicaragua contends that Costa Rica is carrying out major construction works along most of the border area between the two countries with grave environmental consequences.

245. In its application, Nicaragua claims, inter alia, that "Costa Rica's unilateral actions ... threaten to destroy the San Juan de Nicaragua River and its fragile ecosystem, including the adjacent biosphere reserves and internationally protected wetlands that depend upon the clean and uninterrupted flow of the River for their survival". According to the applicant, "[t]he most immediate threat to the River and its environment is posed by Costa Rica's construction of a road running parallel and in extremely close proximity to the southern bank of the River, and extending for a distance of at least 120 kilometres, from Los Chiles in the west to Delta in the east".

It is also stated in the Application that "[t]hese works have already caused and will continue to cause significant economic damage to Nicaragua".

246. Nicaragua accordingly "requests the Court to adjudge and declare that Costa Rica has breached: (a) its obligation not to violate Nicaragua's territorial integrity as delimited by the 1858 Treaty of Limits, the Cleveland Award of 1888 and the five Awards of the Umpire EP Alexander of 30 September 1897, 20 December 1897, 22 March 1898, 26 July 1899 and 10 March 1900; (b) its obligation not to damage Nicaraguan territory; (c) its obligations under general international law and the relevant environmental conventions, including the Ramsar Convention on Wetlands, the Agreement over the Border Protected Areas between Nicaragua and Costa Rica (International System of Protected Areas for Peace [SI-A-PAZ] Agreement), the Convention on Biological Diversity and the Convention for the Conservation of the Biodiversity and Protection of the Main Wild Life Sites in Central America."

247. Furthermore, Nicaragua requests the Court to adjudge and declare that Costa Rica must: "(a) restore the situation to the status quo ante; (b) pay for all damages caused including the costs added to the dredging of the San Juan River; (c) not undertake any future development in the area without an appropriate transboundary Environmental Impact Assessment and that this assessment must be presented in a timely fashion to Nicaragua for its analysis and reaction."

248. Finally, Nicaragua requests the Court to adjudge and declare that Costa Rica must: "(a) cease all the constructions underway that affect or may affect the rights of Nicaragua; (b) produce and present to Nicaragua an adequate Environmental Impact Assessment with all the details of the works."

249. As the basis for the jurisdiction of the Court, the applicant invokes Article 36, paragraph 1, of the Statute of the Court by virtue of the operation of article XXXI of the American Treaty on Pacific Settlement of 30 April 1948 ("Pact of Bogotá), as well as the declarations of acceptance made by Nicaragua on 24 September 1929 (modified on 23 October 2001) and by Costa Rica on 20 February 1973, pursuant to Article 36, paragraph 2, of the Statute of the Court.

250. Nicaragua asserts that Costa Rica has repeatedly refused to give Nicaragua appropriate information on the construction works it is undertaking and has denied that it has any obligation to prepare and provide to Nicaragua an Environmental Impact Assessment, which would allow for an evaluation of the works. The Applicant therefore requests the Court to order Costa Rica to produce such a document and to communicate it to Nicaragua. It adds that "in all circumstances and particularly if this request does not produce results, [it] reserves its right to formally request provisional measures".

251. Nicaragua also states that as "the legal and factual grounds of the [Application] are connected to the ongoing case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*", it "reserves its rights to consider in a subsequent phase of the present proceedings ... whether to request that the proceedings in both cases should be joined".

252. By an order of 23 January 2012, the Court fixed 19 December 2012 and 19 December 2013 as the respective time limits for the filing of a memorial by Nicaragua and a counter-memorial by Costa Rica. The subsequent procedure has been reserved for further decision.

C. Pending advisory proceedings during the period under review

Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development (request for advisory opinion)

253. On 26 April 2010, the Court received a request for an advisory opinion from the International Fund for Agricultural Development (IFAD), aimed at obtaining the reversal of a judgment rendered by an administrative court, the Administrative Tribunal of the International Labour Organization (hereinafter "the Tribunal" or "ILOAT").

254. In its judgment No. 2867 (*Saez García* v. *IFAD*), delivered on 3 February 2010, the Tribunal found that it had jurisdiction under the terms of Article II of its Statute to rule on the merits of a complaint against IFAD introduced by Ana Teresa Saez García, a former staff member of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. Ms. Saez García held a fixed-term contract of employment which was due to expire on 15 March 2006 (see annual report 2009-2010 et seq.).

255. The Executive Board of IFAD, by a resolution adopted at its ninety-ninth session on 22 April 2010, acting within the framework of Article XII of the annex to the Statute of the Tribunal, decided to challenge the above-mentioned judgment of the Tribunal and to refer the question of the validity of that judgment to the International Court of Justice for an advisory opinion.

256. The request for an advisory opinion was transmitted to the Court by a letter from the President of the Executive Board of IFAD dated 23 April 2010 and received in the Registry on 26 April 2010.

It contained the following nine questions:

"I. Was the ILOAT competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development (hereby the Fund) on 8 July 2008 by Ms A.T.S.G., an individual who was a member of the staff of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereby the Convention) for which the Fund acts merely as housing organization?

"II. Given that the record shows that the parties to the dispute underlying the ILOAT's Judgment No. 2867 were in agreement that the Fund and the Global Mechanism are separate legal entities and that the Complainant was a member of the staff of the Global Mechanism, and considering all the relevant documents, rules and principles, was the ILOAT's statement, made in support of its decision confirming its jurisdiction, that 'the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes' and that the 'effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund' outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

"III. Was the ILOAT's general statement, made in support of its decision confirming its jurisdiction, that 'the personnel of the Global Mechanism are staff members of the Fund' outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

"IV. Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea alleging an abuse of authority by the Global Mechanism's Managing Director outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

"V. Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea that the Managing Director's decision not to renew the Complainant's contract constituted an error of law outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

"VI. Was the ILOAT's decision confirming its jurisdiction to interpret the Memorandum of Understanding between the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and IFAD (hereby the MoU), the Convention, and the Agreement Establishing IFAD beyond its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

"VII. Was the ILOAT's decision confirming its jurisdiction to determine that by discharging an intermediary and supporting role under the MoU, the President was acting on behalf of IFAD outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

"VIII. Was the ILOAT's decision confirming its jurisdiction to substitute the discretionary decision of the Managing Director of the Global Mechanism with its own outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

"IX. What is the validity of the decision given by the ILOAT in its Judgment No. 2867?"

By letters dated 26 April 2010, the Registrar of the Court gave notice, pursuant to Article 66, paragraph 1, of the Statute, of the request for an advisory opinion to all States entitled to appear before the Court.

257. By an order of 29 April 2010, the Court:

(a) Decided that IFAD and its member States entitled to appear before the Court, the States parties to the United Nations Convention to Combat Desertification entitled to appear before the Court and those specialized agencies of the United Nations which have made a declaration recognizing the jurisdiction of the Administrative Tribunal of ILO pursuant to Article II, paragraph 5, of the Statute of the Tribunal were considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion;

(b) Fixed 29 October 2010 as the time limit within which written statements on these questions could be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute;

(c) Fixed 31 January 2011 as the time limit within which States and organizations having presented written statements could submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute;

(d) Decided that the President of IFAD should transmit to the Court any statement setting forth the views of the complainant in the proceedings against the Fund before the Administrative Tribunal of ILO which the said complainant may wish to bring to the attention of the Court; and fixed 29 October 2010 as the time limit within which any possible statement by the complainant who is the subject of the judgment could be presented to the Court and 31 January 2011 as the time limit within which any possible comments by the complainant could be presented to the Court.

258. On 26 October 2010, the General Counsel of IFAD submitted a written statement of the Fund and a statement setting forth the views of the complainant.

259. On 28 October 2010, the Ambassador of the Plurinational State of Bolivia to the Netherlands submitted a written statement from his Government.

260. By order of 24 January 2011, the President of the Court extended to 11 March 2011 the time limit within which States and organizations having presented written statements may submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute, as well as the time limit within which any comments by the complainant in the proceedings against the Fund before the Tribunal may be presented to the Court. The time limits were extended in response to a request to that effect made by the General Counsel of IFAD.

261. The written comments of the Fund and those of the complainant were presented within the time limit thus extended.

262. In its advisory opinion rendered on 1 February 2012, the Court responded to the IFAD request as follows:

"For these reasons,

The Court,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) Unanimously,

Decides to comply with the request for an advisory opinion;

(3) *Is of the opinion*:

(*a*) with regard to Question I,

Unanimously,

That the Administrative Tribunal of the International Labour Organization was competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development on 8 July 2008 by Ms. Ana Teresa Saez García;

(*b*) with regard to Questions II to VIII,

Unanimously,

That **these questions do not require further answers from the Court;**

(*c*) with regard to Question IX,

Unanimously,

That **the decision given by the Administrative Tribunal of the International Labour Organization in its judgment No. 2867 is valid."**

Chapter VI
Visits to the Court and other activities

263. On 27 September 2011, the Court was visited by the Prime Minister of Viet Nam, Mr. Nguyen Tan Dung. The Prime Minister was accompanied, in particular, by a delegation consisting of several Government ministers and the Ambassador of Viet Nam to the Netherlands. Mr. Nguyen Tan Dung and his delegation were welcomed on their arrival by the President of the Court, Judge Hisashi Owada, and the Registrar, Philippe Couvreur. The Prime Minister and various Vietnamese officials then had discussions with the President and the Registrar in the meeting room in which the Court assembles before its public sittings.

264. On the same day, the Mayor of The Hague, Jozias van Aartsen, together with his Aldermen, paid a visit to the seat of the Court at the Peace Palace. It was the first time that the entire Municipal Executive of the City of The Hague had undertaken such a visit to an international organization. The Mayor and his Aldermen were welcomed on their arrival by the Registrar of the Court, Philippe Couvreur. They were introduced to the President, Judge Hisashi Owada, and to the other members of the Court. During an informal lunch, members of the Court explained how the Court functions to the municipal officials, and the latter, in turn, were able to communicate to the judges their international ambitions for the city of The Hague.

265. On 12 October 2011, the Prime Minister of the Netherlands, His Excellency Mr. Mark Rutte, paid a visit to the Court. It was his first visit to the principal judicial organ of the United Nations. Mr. Rutte and his delegation were welcomed on their arrival by the President of the Court, Judge Hisashi Owada, and the Registrar, Philippe Couvreur. The Prime Minister and the members of the delegation who accompanied him were received by all the members of the Court in the Council Room. 2. On 29 November 2011, the Court was visited by the President of Slovenia, Mr. Danilo Türk. Mr. Türk and his delegation were welcomed on their arrival by the President of the Court, Judge Hisashi Owada, and the Registrar, Philippe Couvreur. The President of Slovenia and the members of his official delegation were received for a brief discussion in the suite of the President of the Court, after which they met the members of the Court. There was a solemn sitting in the Great Hall of Justice, which was attended by members of the Diplomatic Corps and representatives of the Dutch authorities and international institutions based in The Hague and at which speeches were made by Presidents Owada and Türk.

266. On 12 June 2012, Mr. Evo Morales Ayma, President of the Plurinational State of Bolivia, paid a courtesy visit to the President of the Court, Judge Peter Tomka. Mr. Morales and his delegation had a brief discussion with the President of the Court and the Registrar, Philippe Couvreur, concerning general aspects of the Court's work.

267. In addition, during the period under review, the President, members of the Court, the Registrar and Registry officials welcomed a large number of dignitaries, including members of Governments, diplomats, parliamentary representatives, presidents and members of judicial bodies and other senior officials, to the seat of the Court.

268. There were also many visits by researchers, academics, lawyers and other members of the legal profession, and journalists, among others. Presentations on the Court were made during a number of these visits.

269. On Sunday 18 September 2011, the Court welcomed some 600 visitors as part of "The Hague International Day", organized in conjunction with the Municipality of The Hague, in order to introduce the expatriate community and Dutch citizens to the international organizations based in the city. This was the fourth time that the Court had taken part in this event. During the course of this "open day", the Information Department screened the "institutional film" about the Court in English and in French, answered visitors' questions and distributed various information brochures.

Chapter VII
Publications, documents and website of the Court

270. The publications of the Court are distributed to the Governments of all States entitled to appear before the Court, to international organizations and to the world's major law libraries. The catalogue, which is published in English and French, is distributed free of charge. A revised and updated version of the catalogue, containing the new 13-digit ISBN references, is under preparation and will be published in the second half of 2012. It will be available on the Court's website (www.icj-cij.org, under the heading "Publications").

271. The publications of the Court consist of several series. The following three series are published annually: (a) *Reports of Judgments, Advisory Opinions and Orders* (published in separate fascicles and as a bound volume), (b) *Yearbooks*; and (c) the *Bibliography* of works and documents relating to the Court.

272. As at the date of the present report, the bound volume of *Reports 2009* had been printed. The two bound volumes of *Reports 2010* will be issued during the second half of 2012. The *Yearbook 2008-2009* was printed during the period under review, while the *Yearbook 2009-2010* was being finalized. The *Bibliography of the International Court of Justice*, No. 56, was also published during the period under review and No. 57 will be released during the end of the second half of 2012.

273. The Court also publishes bilingual printed versions of the instruments instituting proceedings in contentious cases referred to it (applications instituting proceedings and special agreements), and of applications for permission to intervene and requests for advisory opinions it receives. In the period covered by the present report, one case was submitted to the Court; the application instituting proceedings is currently being printed.

274. The pleadings and other documents submitted to the Court in a case are usually made accessible to the public by the Court once that case is concluded. They are published after the instruments instituting proceedings, in the series *Pleadings, Oral Arguments, Documents*. The volumes of this series, which now contain the full texts of the written pleadings, including annexes, as well as the verbatim reports of the public hearings, give practitioners a complete view of the arguments elaborated by the parties.

275. The following volumes were published in the period covered by this report, or will be published shortly: *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua)* (five volumes); *LaGrand (Germany* v. *United States of America)* (three volumes); *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (11 volumes).

276. In the series Acts and Documents concerning the Organization of the Court, the Court publishes the instruments governing its organization, functioning and practice. The most recent edition, No. 6, which was completely updated and includes the Practice Directions adopted by the Court, came out in 2007. An offprint of the Rules of Court, as amended on 5 December 2000, is available in English and French. These documents can also be found online on the Court's website (www.icj-cij.org, under the heading "Basic Documents"). Unofficial translations of the Rules of Court are also available in the other official languages of the United Nations and in German and may be found on the Court's website.

277. The Court issues press releases and summaries of its decisions.

278. It also publishes a handbook intended to facilitate a better understanding of the history, organization, jurisdiction, procedures and jurisprudence of the Court. The fifth edition of this handbook was released in January 2006 in the Court's two official languages. The sixth edition will be published shortly in those two languages, and will subsequently be translated into the other official languages of the United Nations and into German.

279. The Court also produces a general information booklet in the form of questions and answers. This booklet is produced in all the official languages of the United Nations and in Dutch.

280. A special, lavishly illustrated, book, *The Illustrated Book of the International Court of Justice*, was also published in 2006. An updated version of the book is due to be published to mark the seventieth anniversary of the Court, which will be celebrated in 2016.

281. The Court also produces a leaflet for the general public which gives an overview of the history and composition of the Court, as well as of its mission (contentious and advisory jurisdiction).

282. During the period under review, the Registry continued to update its 18-minute institutional film about the Court, which is available in various language versions. In addition to the previously available English, French, Chinese, Korean and Vietnamese versions, the film has also been produced in Italian and German. Preparations are under way for Arabic, Russian, Spanish and Dutch versions. The film is available online on the Court's website under the heading "Multimedia". It has also been supplied to the United Nations audiovisual broadcasting services (UNifeed) and the United Nations Audiovisual Library of International Law. It is also shown regularly on a big screen to visitors at the Peace Palace.

283. Thanks to its clearly organized website, the Registry is able to post multimedia files online (broadcasts of the Court's most recent public hearings, listed in chronological order) for the print and broadcast media and, in most cases, to provide full live (web streaming) and recorded (VOD) coverage of the Court's public hearings.

284. The website makes it possible to access the entire jurisprudence of the Court since 1946, as well as that of its predecessor, the Permanent Court of International Justice. It also gives easy access to the principal documents (not including annexes) from the written and oral proceedings in all cases, all of the Court's press releases, a number of basic documents (Charter of the United Nations, Statute of the Court, Rules of Court and Practice Directions), declarations recognizing the Court's compulsory jurisdiction and a list of treaties and conventions providing for that jurisdiction, general information on the Court's history and procedure, biographies and photographic portraits of the judges and the Registrar, information on the organization and functioning of the Registry, and a catalogue of publications.

285. The site includes a calendar of hearings and events, and online application forms for groups and individuals wishing to attend hearings or presentations on the activities of the Court. Pages listing vacancy announcements and internship opportunities can also be found on the website.

286. Finally, the "Press Room" page provides online access to all the necessary services and information for reporters wishing to cover the Court's activities (press

releases and other explanatory texts, photographs, videos, online accreditation procedures, etc.). The photo gallery offers them a large number of digital images, which can be downloaded free of charge (for non-commercial use only). These include portraits of all the members of the Court and the Registrar, photographs taken during the Court's public hearings and general shots (of the rooms and building). Audio and video clips from recent hearings and readings of the Court's decisions are also available in several formats (Flash, MPEG2, MP3).

287. Thanks to the cooperation of the United Nations Department of Public Information, the Court's photographs and video footage have also been available on the "UN Photo" and "UN Webcast" websites since 2011 (www.unmultimedia.org). The Registry intends to continue and deepen this cooperation.

Chapter VIII
Finances of the Court

A. Method of covering expenditure

288. In accordance with Article 33 of the Statute of the Court, "The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly." As the budget of the Court has been incorporated in the budget of the United Nations, Member States participate in the expenses of both in the same proportion, in accordance with the scale of assessments determined by the General Assembly.

289. In accordance with established practice, sums derived from staff assessment, sales of publications (dealt with by the sales sections of the Secretariat), bank interest, etc., are recorded as United Nations income.

B. Drafting of the budget

290. In accordance with articles 24 to 28 of the revised Instructions for the Registry, a preliminary draft budget is prepared by the Registrar. This preliminary draft is submitted for the consideration of the Budgetary and Administrative Committee of the Court and then for approval to the Court itself.

291. Once approved, the draft budget is forwarded to the Secretariat of the United Nations for incorporation into the draft budget of the United Nations. It is then examined by the Advisory Committee on Administrative and Budgetary Questions and thereafter submitted to the Fifth Committee of the General Assembly. It is finally adopted by the General Assembly in plenary meeting, within the framework of decisions concerning the budget of the United Nations.

C. Budget implementation

292. The Registrar is responsible for implementing the budget, with the assistance of the Finance Division (see para. 89 above). The Registrar has to ensure that proper use is made of the funds voted and must see that no expenses are incurred that are not provided for in the budget. He alone is entitled to incur liabilities in the name of the Court, subject to any possible delegations of authority. In accordance with a decision of the Court, adopted on the recommendation of the Subcommittee on Rationalization, the Registrar now regularly communicates a statement of accounts to the Budgetary and Administrative Committee of the Court.

293. The accounts of the Court are audited every year by the Board of Auditors appointed by the General Assembly. At the end of each biennium, the closed accounts are forwarded to the Secretariat of the United Nations.

D. Budget of the Court for the biennium 2012-2013

294. Regarding the budget for the biennium 2012-2013, the Court was pleased to note that its requests for new posts and its other spending proposals were largely granted.

Budget for the biennium 2012-2013
(United States dollars, after re-costing)

Programme		
Members of the Court		
0311025	Allowances for various expenses	1 130 700
0311023	Pensions	3 866 600
0393909	Duty allowance: judges ad hoc	1 238 500
2042302	Travel on official business	53 100
0393902	Emoluments	7 857 600
Subtotal		**14 146 500**
Registry		
0110000	Permanent posts	17 590 800
0170000	Temporary posts for the biennium	200 100
0200000	Common staff costs	6 679 600
1540000	(Medical and associated costs, after suspension of services)	319 200
0211014	Representation allowance	7 200
1210000	Temporary assistance for meetings	1 514 300
1310000	General temporary assistance	265 600
1410000	Consultants	159 200
1510000	Overtime	102 200
2042302	Official travel	49 600
0454501	Hospitality	20 600
Subtotal		**26 908 400**
Programme support		
3030000	External translation	448 000
3050000	Printing	637 800
3070000	Data-processing services	673 400
4010000	Rental/maintenance of premises	3 389 900
4030000	Rental of furniture and equipment	247 800
4040000	Communications	211 800
4060000	Maintenance of furniture and equipment	112 400
4090000	Miscellaneous services	49 100
5000000	Supplies and materials	278 500
5030000	Library books and supplies	245 000
6000000	Furniture and equipment	201 800
6025041	Acquisition of office automation equipment	80 300
6025042	Replacement of office automation equipment	135 700
Subtotal		**6 711 500**
Total		**47 766 400**

295. More comprehensive information on the work of the Court during the period under review is available on its website. It will also be found in the *Yearbook 2011-2012*, to be issued in due course.

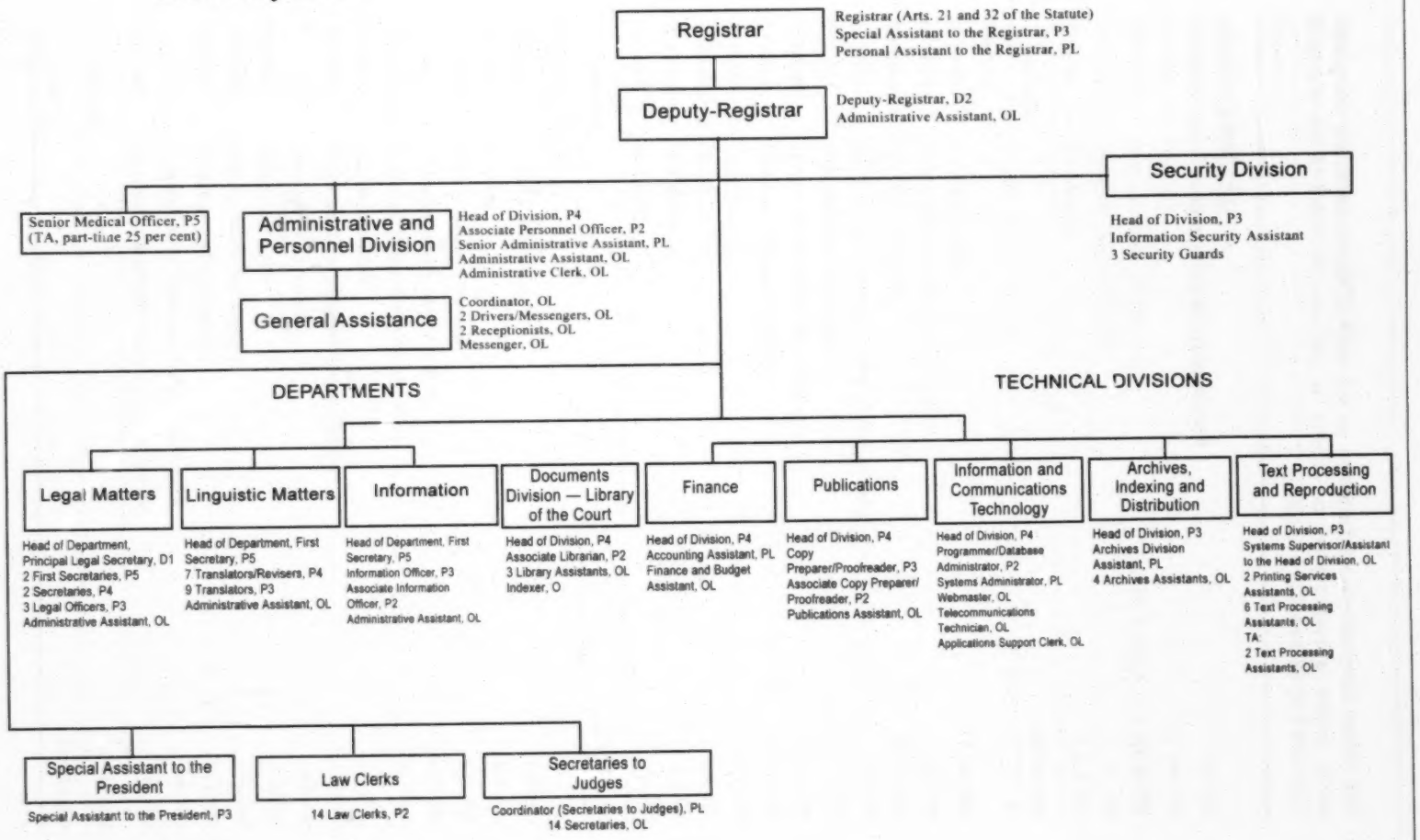
(*Signed*) Peter **Tomka**
President of the International Court of Justice

The Hague, 1 August 2012

12-46228 (E) 260912

Annex

International Court of Justice: organizational structure and post distribution as at 31 July 2012



Abbreviations: PL, Principal level; OL, Other level; TA, temporary assistance.